

**Victor and Mia Parsonnet**

**v.**

**Town of Moultonborough**

**Docket No.: 17265-96PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$705,200 (land \$500,100; buildings \$205,100) on a 1.12-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) a right of way to the cove on the lee side of the point encumbers the northern portion of the lot;
- (2) the lot is triangular with the back portion encumbered with the septic system;

- (3) most of the waterfront is unusable due to its rocky nature and the water is shallow causing frequent damage to boat motors on submerged rocks;
- (4) the frontage is used similar to non-point properties; the “point” factor applied by the Town is subjective;
- (5) other properties that sold with similar views did not receive the “point” factor;
- (6) the grade of the house (excellent) is too high given its simple pine walls and other average materials; and
- (7) the Property has a market value of \$450,000 to \$500,000, similar to other waterfront assessments.

The Town argued the assessment was proper because:

- (1) an analysis of waterfront sales at the time of the reassessment indicated ten different waterfront value "neighborhoods" and that location on "points" or "peninsulas" were valued higher in the market;
- (2) overall and stratified assessment-to-sales ratio studies subsequent to the reassessment indicate very acceptable assessment equity as the result of the analysis and assumptions made during the reassessment;
- (3) the replacement cost of the dwelling contained in the Taxpayers' 1993 appraisal is close to the Town's replacement cost;
- (4) other than the Taxpayers' 1993 appraisal (estimated market value of \$550,000) which would need to be updated, the Taxpayers did not present any market value evidence;
- (5) the adjoining lot 29 which is the other half of the point has a “point” factor of 2.00 also; and
- (6) the house is angled to take advantage of the sweeping frontage of the lot.

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After the hearing, the board instructed its review appraiser to review the file, inspect the properties and submit a report. The parties should note that the review appraiser's report is not an

appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendations. In this case, the board does not find the review appraiser's report to be conclusive evidence, but has considered it to be one piece of the evidence the board reviewed in making its determination.

### **Board's Rulings**

Based on the evidence, the board finds the correct assessment for the Property should be \$642,600 based on a land assessment of \$437,500 and an assessment of \$205,100 for the improvements.

The primary issue in this case was the effect of the Property's location near or on the end of a point. It was the Town's position that the Property's location near the end of a point enhanced its value. The review appraiser, on the other hand, addressed the Property's value using a calculation involving the amount of water frontage. The board finds both of these factors may have an influence on value. Frequently, properties located on or near the end of points have an amount of privacy and exclusivity as well as potentially enhanced views that are not available to typical waterfront lots. However, it would be inaccurate to say that this was solely due to the point location versus the amount of water frontage, as the amount of frontage may give some of the same benefits. The board considers both the water frontage and the location on or near the end of a point to be important factors that may affect a property's value.

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The Property shares the end of a point with another property and, therefore, while not having the entire expansive view that a property that occupied an entire point would have, it does have an enhanced view and a substantial amount of water frontage. For this reason the board has applied a 1.75 location factor to the primary land value of \$250,000 to arrive at the final land value of \$437,500. The Taxpayers argued that the location of the right of way on the north portion of the lot

does not provide sufficient buffer from the neighbors. The board finds this argument unpersuasive. The Property has an above average amount of area and water frontage when compared to the majority of waterfront lots on the lake. The lot is triangularly shaped and has an above average amount of water frontage (325 feet plus or minus). The location on the end of the point gives the Property more privacy than a typical waterfront lot and the substantial amount of water frontage also enhances the privacy of the Property. The fact that the Property has 1.12 acres allows for the placement of the septic system away from the dwelling and at the back of the Property. The board finds this situation to be typical for waterfront properties. One of the restrictions placed on many waterfront properties and one of the difficult obstacles to overcome for development is the placement of an approved septic system in an appropriate area. Typically, waterfront properties have the septic system as far away from the water frontage as possible, and in the case of the Property, the large area and shape of the lot allows for the back portion of this triangularly-shaped lot to be an ideal place to locate the septic system.

The board concurs with the Town that the Taxpayers' 1993 appraisal should either have been updated to the date of the appeal or redone. Some of the sales used in the 1993 appraisal had an effective sale date of 1992. This fact coupled with the appraiser's discussion of residential property

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values in general throughout the Town causes the board to find that the appraisal is not on point for this Property. The appraiser should have concentrated on waterfront properties when discussing appreciation and depreciation rates or marketing times.

The board does concur with the Taxpayers in that the location of the Property, sharing the point, is not the same and should not be given the same point location adjustment factor as the Batchelder sale which occupies an entire point.

Lastly, the board finds the Town's replacement cost and depreciated value of the house is reasonable. Both the photographs and the replacement cost contained in the Taxpayers' appraisal are evidence that support the Town's estimate.

If the taxes have been paid, the amount paid on the value in excess of \$642,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1997 and 1998. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new

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evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kathleen Collins, Agent for Victor and Mia Parsonnet, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: May 27, 1999 \_\_\_\_\_

Lynn M. Wheeler, Clerk

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**Recertification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Victor and Mia Parsonnet, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough, and Chairman, Selectmen of Moultonborough.

Date: September 10, 1999

Lynn M. Wheeler, Clerk

**Victor and Mia Parsonnet**

v.

**Town of Moultonborough**

**Docket No.: 17265-96PT**

**ORDER**

This order relates to the "Taxpayers" letter dated July 2, 1999 (copy attached). This letter raises two issues: 1) how the board's May 27, 1999 decision can be appealed; and 2) the nature and adequacy of Ms. Kathleen Collins' representation. Because the letter was not copied to the other parties (TAX 201.14), copies are being sent to all parties and an additional 10 days is provided, from the clerk's date below, to file any comments.

First, an appeal of a board's property tax decision is to the supreme court after a rehearing motion has been filed within 30 days of the decision. RSA71-B:12; RSA 541:3 and 6. **71-B:12 Appeal.** Decisions of the board may be appealed by either party only in accordance with the provisions of RSA 541 as from time to time amended; provided, however, that there shall be only one appeal allowed per person on each parcel of land until such time as a reassessment has been made.

**541:3 Motion for Rehearing.** Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

**541:6 Appeal.** Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.

The board's decision in this appeal was issued on May 27, 1999. Therefore, for a rehearing motion to be timely, it had to have been filed by June 28, 1999. Rehearing and appeal timelines are statutory, and the board does not have the authority to extend them. Appeal of Gillen, 132 N.H. 313 (1989); Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985) (Board's authority is strictly statutory). Daniel v. B & J Realty, 134 N.H. 174, 176 (1991) (lacking specific statutory authorization, municipalities have no discretionary authority to extend procedural timelines.) Consequently, the Taxpayers are too late to file a rehearing motion.

Second, the Taxpayers raise allegations as to the nature and adequacy of Ms. Kathleen Collins' representation. RSA 71-B:7-a gives the board the authority to deny representation by a non-attorney if the board deems such individual has shown they are unable to adequately represent taxpayers. Consequently, Ms. Collins shall respond within 10 days as to the extent of her representation of the Taxpayers, provide a copy of any agreement she may have had with the Taxpayers and whether she had notified the Taxpayers of the decision and/or provided a copy of it to them.

Lastly, TAX 201.08 (e) provides that when an agent has filed an appearance on behalf of taxpayers (as Ms. Collins did at the hearing), any board communications, including decisions, are sent to the agent.

After the board receives comments from the parties, it will determine what, if any, further action is necessary.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Kathleen Collins, Agent for Victor and Mia Parsonnet, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; Victor and Mia Parsonnet; and Chairman, Selectmen of Moultonborough.

Date: July 20, 1999\_\_\_\_\_

Lynn M. Wheeler, Clerk

**Victor and Mia Parsonnet**

**v.**

**Town of Moultonborough**

**Docket No.: 17265-96PT**

**ORDER**

This order responds to Ms. Kathleen Collins' July 28, 1999 letter, filed in response to the board's July 20, 1999 order. After reviewing Ms. Collins' response, the board finds a limited hearing is necessary to address the following issues:

- 1) whether Ms. Collins was a witness or an agent as defined under board rule TAX 101.03;
- 2) whether the board's May 27, 1999 decision should have been sent to Ms. Collins, in her capacity as agent, or directly to the "Taxpayers;" and
- 3) whether the board's decision should be resent, resulting in new appeal deadlines.

**The limited hearing has been scheduled for Tuesday, September 7, 1999 at 9:00 A.M. at the board's offices in Concord, New Hampshire.** Ms. Collins is ordered to attend the hearing.

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The board will also receive testimony from the Taxpayer and the "Town" relative to the

issues outlined above.

The board notes that the Town has two property-tax cases previously scheduled for September 7th. The board intends to hear this matter first, and then proceed with the previously scheduled property-tax cases.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Victor and Mia Parsonnet, Taxpayers; Ms. Kathleen Collins; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: August 6, 1999 \_\_\_\_\_

Lynn M. Wheeler, Clerk

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**Victor and Mia Parsonnet**

**v.**

**Town of Moultonborough**

**Docket No.: 17265-96PT**

**ORDER**

This order relates to the issues raised in the board's order of August 6, 1999, and heard on September 7, 1999. Attending the hearing were Ms. Kathleen Collins, Victor and Mia Parsonnet and Ms. Mary Pinkham-Langer, agent for the "Town" of Moultonborough.

Based on the testimony and the board's review of the record of the September 28, 1998 hearing on the merits of the case, the board concludes Ms. Collins acted in the capacity of a witness and not as the "Taxpayers'" agent or representative. While some of Ms. Collins' actions were contradictory as to her role, it is clear the Taxpayers never intended to give up control of their appeal to Ms. Collins.

Based on Ms. Collins' appearance filed on September 28, 1998, the board's decision was sent to her on May 27, 1999, and not the Taxpayers. The Taxpayers subsequently received a copy of the decision, but not until after the RSA 541:3 rehearing timeline had passed. As a consequence, the board rules the Taxpayers were not properly noticed of the board's decision and thus, a recertified and newly dated decision is being sent to the Taxpayers and the Town

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accompanying this order. Any request for rehearing and appeal by either the Town or the Taxpayers shall be from the recertified date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Kathleen Collins; Victor and Mia Parsonnet, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: September 10, 1999\_\_\_\_\_

Lynn M. Wheeler, Clerk

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**Victor and Mia Parsonnet**

**v.**

**Town of Moultonborough**

**Docket No.: 17265-96PT**

**ORDER**

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3. Additionally, the Taxpayers did not raise any issues that were not previously addressed at the hearing.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Kathleen Collins; Victor and Mia Parsonnet, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: October 22, 1999\_\_\_\_\_

Lynn M. Wheeler, Clerk

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