

Shore Bluffs Realty Trust

v.

Town of Ossipee

Docket No.: 17266-96PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$23,100 on a vacant, .08-acre (the Property). The Taxpayer also owns, but did not appeal, another property in the Town with a \$150,000 assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the lot is a non-buildable .08-acre strip of land along the shore with

121 feet of water frontage; the lot was not taxed prior to 1996 due to a question of ownership which has been resolved;

(2) the lot has steep slopes and is passable only by stairs in the middle and a path at the far end;

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(3) a non-waterfront owner claims a right-of-way over the stairs which is currently in litigation;

(4) a January 1997 market analysis estimated the value to be \$12,000; and

(5) the Deer Cove Shorefront Owners Association purchased a 1,390 foot strip of land for \$35,000.

The Town recommended revising the assessment to \$18,750 and argued the revised assessment was proper because:

(1) the highest and best use of the Property is to be used in conjunction with a non-waterfront property;

(2) no comparable sales were provided by the broker to support his estimate of value;

(3) the sale to the Deer Cove Shorefront Owners Association was not a market value transaction;

(4) one sale of two lots (separated by a road) in October 1992 for \$45,500 was reviewed along with area assessments which indicated the revised assessment is proper; and

(5) correcting the acreage to .08-acre and adjusting the neighborhood and condition factors indicates a reasonable value.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment to be

\$18,750 for an indicated market value of \$17,500 ( $\$18,750 \div 1.07$  equalization ratio).

The board concurs with the Town that the highest and best use of this Property is for use in conjunction with a non-waterfront property or for access to the water. Based on the evidence (including photographs) presented and the board's judgment and experience<sup>1</sup> in hearing waterfront appeals and appeals of similar type lots purchased for water access, the board finds it is

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not unreasonable to expect a purchaser would pay \$17,500 for the Property in 1996. Although the lot is small and steep in some areas, it does have ample water frontage (121 feet), has stairway access to a sandy beach and also a separate path to the water.

The Taxpayer submitted a survey by Lindon Design Associates which showed the land consisted of .08-acre with 121 feet plus or minus of water frontage.

The Town based its revised calculations on the surveyed acreage reflecting a revised unit price of \$5,000. Based upon a review of the assessments along Deer Cove Road and the one two-parcel sale in 1992, the Town recommended revisions to the neighborhood factor (to 2.5) and the condition factor (to 1.5) for a final assessed value of \$18,750. The board finds these revisions to be appropriate and finds no further adjustment is warranted.

The Taxpayer submitted a market analysis prepared by Robert M. Clark of Busch Real Estate. Mr. Busch expressed his opinion of value to be \$12,000.

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<sup>1</sup> The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The board considered this evidence but gave it little weight because the opinion did not include the basis for the value conclusion. Specifically, Mr. Busch did not indicate what, if any, sales he used in arriving at his value and what adjustments were made to the sales (for such items as topography, access, water frontage). The board cannot review the soundness of his value conclusion without this information.

The Taxpayer also asked the board to rely on the 1993 sale of the 1,390 foot strip to the Deer Cove Shorefront Owners Association. The board finds that this sale was not an arm's-length transaction because of the substantial easements encumbering the lot and the seller was an elderly woman anxious to sell the property. The Taxpayer's Property may be encumbered by one easement, a question which is currently in litigation; however, one cannot compare this lot to the Deer Cove lot with its significant restrictions.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of 18,750 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-

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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. 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 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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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles and Virginia Young, Trustees of Shore Bluffs Realty Trust, Taxpayer; and Chairman, Selectmen of Ossipee.

Date: July 1, 1998

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Valerie B. Lanigan, Clerk