

Walter L. Koenig

v.

Town of Moultonborough

Docket No.: 17486-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$661,729 (land \$602,729; buildings \$59,000) on a single-family home on a 5-acre lot (the "Property"). The Taxpayer also owns, but did not appeal, three other lots in the Town with a combined, total current-use assessment of \$43,281. 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 Property is located on an island accessed by a floating causeway;

- (2) the house is totally surrounded by swamp and has no view of the water frontage;
- (3) the boat ramp is completely surrounded by swamp and a boat dock is not possible because it is so shallow;
- (4) the land value does not take into consideration the Property's lack of views, the quality of soil, the small quantity of usable water frontage and the less than pristine quality of the water frontage;
- (5) a professional broker states there is no way all land is of equal value just because it is waterfront;
- (6) there is no subdivision potential because there is nowhere else on the Property to place a house and septic system; and
- (7) the land value should be reduced by \$200,000.

The Town argued the assessment was proper because:

- (1) the Town was revalued in 1996 and all sales in the entire Town were analyzed along with sales on Squam Lake in Center Harbor;
- (2) the analysis of sales showed the Moultonborough lakefront properties were more prime than the Center Harbor properties and a basic one-acre site value of \$600,000 was determined with adjustments given for point locations or superior locations; each additional one-acre was assessed \$100,000;
- (3) all of the swamp area on the Property is located in the current-use land;
- (4) a 1996 sale and subsequent sale in Moultonborough show the market has supported the values established during the revaluation;
- (5) the desirability and limited availability of water frontage on Squam Lake makes the Property more valuable; and
- (6) the Taxpayer presented no solid evidence of market value.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$601,729. This finding is based on the board determining the one-acre building site value should be adjusted by 10% for shallow water frontage and the causeway access to the Property. The Property consists of a five-acre parcel with four of the acres in current use. While it was difficult to determine from the rough current-use map the exact configuration of the one-acre not in current use, the parties' testimony clearly indicated that it encompassed the best buildable land around the structures and land fronting Squam Lake on the southerly side of the parcel. Because the other four acres are in current use, the ad valorem assessment relates to the property rights embodied in this one-acre primary building site.

Without any available comparable market data, this is a difficult property to value with any certainty. However, the board does not agree with the Town's assertion that building site values on Squam Lake are all the same at \$600,000 for the primary site. The Town stated there were a limited number of sales from which to estimate market value but that those that were available did not indicate a wide variation in building site values except for properties in less desirable locations in Center Harbor. The board agrees that desirable waterfront properties do not show as much variation in value as long as they generally are buildable, have adequate road and water access and reasonable privacy. However, in this case, the board finds the Property has

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some aspects that the market would recognize, specifically the shallow water frontage, access from the water frontage to the house, and the unique access to the Property over a privately maintained causeway. Because no market data was submitted as to the appropriate magnitude of adjustment for these factors, the board has relied upon its judgment and experience after reviewing the photographs submitted by both parties.

If the taxes have been paid, the amount paid on the value in excess of \$601,729 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 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 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

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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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Walter L. Koenig, Taxpayer; Mary E. Pinkham-Langer, Representative for the Town of Moultonborough; and Chairman, Board of Selectmen of Moultonborough.

Date: September 17, 1999

Lynn M. Wheeler, Clerk

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ORDER

This order responds to the “Taxpayer’s” September 28, 1999 motion for clarification which is considered a motion for rehearing in accordance with TAX 201.37(a).

For the reasons stated in the September 17, 1999 decision (Decision), the building site was reduced by 10% resulting in a site value of \$540,000. Consequently, the assessment is summarized as follows:

1-acre building site	\$540,000
.5 acres excess rear land	\$ 2,500
2 acres white pine current use	\$ 206
1.5 acres of wetland current use	\$ 23
Building value	\$ <u>59,000</u>
Total assessment	\$601,729

The Decision adequately outlines the basis for the board’s findings of the above assessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Date: October 11, 1999

Lynn M. Wheeler, Clerk

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