

**Howard W. Nelson**

**v.**

**Town of Washington**

**Docket No.: 17791-98PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$187,500 (land \$115,700; buildings \$71,800) on a 1.5-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Town used several "asking prices" in addition to actual sales prices as indicators of market value during the 1998 reassessment;

(2) such asking prices are approximately 15% higher than sales prices according to discussions

the Taxpayer had with a realtor;

(3) many of the owners of property on Washington Road are older retirees who have listed their properties for sale at 'ridiculously high prices'; and

(4) if the asking prices are removed from the Town's analysis, the base, per-front-foot price for waterfront is \$415, resulting in an assessment of \$170,700.

The Town argued the assessment was proper because:

(1) several properties whose asking prices were used in the reassessment analysis subsequently sold at prices quite close to the asking price;

(2) several sales of waterfront property subsequent to the reassessment indicate the \$500-per-front-foot value used by the Town was appropriate; and

(3) with 200 feet of water frontage and less severe topography, the Property is one of the larger and more desirable lots on Island Pond.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to carry his burden.

The Taxpayer's primary argument is that the Town's use of asking prices in its market analysis performed as part of the 1998 reassessment inflated the waterfront base price (\$500 per front foot) above market value and that a recalculation without those asking prices reduces the Taxpayer's assessment. While in theory the Taxpayer's argument has merit, upon further review of the evidence in this case the board finds the Town's \$500 per-front-foot base price for water frontage is appropriate based on sales data available at the time of the reassessment and based on subsequent waterfront sales.

### Sales Data at Time of Reassessment

RSA 75:1 establishes the standard for assessing property at market value.

**75:1 How Appraised.** Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

For property to be valued correctly, the value should approximate what a lender and a debtor would agree to as a reasonable offset against an outstanding debt. An asking price does not meet the RSA 75:1 requirements because it is not an agreed-to price as part of a consummated transaction. Consequently, reliance upon asking prices as primary indicators of market value for assessing purposes is misplaced as they are generally higher than actual transaction prices. Appraisal Institute, The Appraisal of Real Estate 156 (10<sup>th</sup> ed. 1992). Municipalities more appropriately should rely upon the prices of arm's-length sales as primary indications of market value to analyze and establish base rates. Asking prices and discussions with real estate brokers are appropriate for assessors to consider as secondary sources of market information, especially if sales of a particular type of property or neighborhood are lacking. However, in this case, adequate sales existed prior to the reassessment from which to determine a base rate without having to include asking prices in the primary analysis.

While the Town's inclusion of asking prices did inflate the analysis, the board finds the Town's methodology does not include the inverse calculation for topography and size adjustments that the Town used in assessing land.

Including these inverse calculations in determining the base rates increases the indicated base rates and largely offsets the inflating effect of the asking prices. The board has recalculated the sales utilized by the Town for the primary site value and the waterfront value excluding asking prices but including the appropriate adjustments for size and topography. The board's analysis is included in Appendix A to this decision. The unadjusted primary site value of \$35,000 used by the Town is supported by the board's analysis of the sale of Map 12, Lot 141. Further, the unadjusted per-front-foot waterfront value, based on an analysis of the seven sales, provides a median front-foot price of \$479 and a mean of \$468. This can be contrasted to the over 30% higher median and mean front-foot prices of \$627 and \$621, respectively, derived from the three asking-price properties. The segregation of asking prices from sales clearly indicates that, in general, asking prices exceed sales prices and need to be analyzed and considered separately.<sup>1</sup> Based on this analysis, the Town's \$500 per-front-foot price is reasonable especially considering no time adjustment for a generally-improving market was made to the sales that occurred prior to 1998. Certainly sales that occurred in 1998 through 2000 indicated the market was appreciating at that time.

#### Sales Data Subsequent to the Reassessment

The sales that occurred subsequent to the reassessment (Municipality Exhibit A, page 3

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<sup>1</sup> The board has included Map 12, Lot 94 in both its sales and asking price analysis as the property was listed for \$132,000 during the Town's reassessment and sold in September 1998 for \$132,000. The sale of Map 12, lots 116 and 117 together have been included and analyzed as one parcel by using a weighted average of the Town's separate lot adjustments for topography and easements. The board also notes that two of the sales occurred in 1991 and 1994, both significantly earlier than the 1998 reassessment date. Any correlation of final value needs to consider those sale dates and that the real estate market in 1998 in general was better than either in 1991 or 1994. The board has used 132 feet rather than 100 feet as the actual frontage for Map 12, lot 108, based on the assessment-record card information.

and Municipality Exhibit C) all sold in excess of the \$500 front-foot price when analyzed in a similar fashion. (See last section of board's analysis in Appendix A.) Sales subsequent to a reassessment are often the best evidence of whether a municipality's methodology was market-based and consistently applied. The evidence in this case supports this conclusion, despite the offsetting inclusion of the asking prices and exclusion of the adjustment factors in the Town's land analysis.

#### Addendum

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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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Howard W. Nelson, Taxpayer; and Chairman, Board of Selectmen of Washington.

Date: August 2, 2000

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Lynn M. Wheeler, Clerk

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## **APPENDIX A**