

John A. and Gail M. Edie

v.

Town of Meredith

Docket No.: 17987-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$406,400 (land \$135,300; buildings \$271,100) on a 1.90-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is denied.

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 the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property is located on an island and has a large, modern house; both unique features;
- (2) the Property is overbuilt and the Taxpayers would not be able to recoup their investment if

they were to sell the Property;

(3) the Town has not adequately discounted the assessment to reflect the uniqueness of the Property;

(4) most improved, island-property sales are of cottages or camps, and therefore, are not comparable; and

(5) based on an independent appraisal, the Property's April 1, 1998 market value was \$338,000.

The Town argued the assessment was proper because:

(1) the sales used in the Taxpayers' appraisal are not comparable and the appraiser's methodology is flawed;

(2) the Town took into account all factors that influence the Property's value;

(3) the land-value portion of the assessment reflects the island location of the Property;

(4) the cost approach is the most appropriate approach to value the Property;

(5) the equalized assessment is substantially less than the actual cost to acquire the land and construct the improvements; and

(6) the Town has assessed the Property in a manner consistent with all other island properties.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not prove their Property was disproportionately or illegally assessed.

The Taxpayers did not present any credible evidence of the Property's market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H.

795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985);

Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The board reviewed the appraisal submitted by the Taxpayers and concluded it is not credible evidence and of little probative value in determining whether or not the Property is assessed accurately. The board makes this determination for two reasons: 1) the comparable sales utilized by the appraiser have little or no relevance to the Property; and 2) the cost approach was not performed in the appraisal.

It is obvious, from the photographs submitted by the Town, the comparable sales selected by the appraiser are truly cottages or camps, while the Taxpayers' Property is a 3,100, square-foot, architecturally designed dwelling of well-crafted construction, built with top-quality materials. Additionally, the appraisal did not make adjustments for some important factors that should have been addressed, such as the quality of construction or the design of the Property when compared to the comparable sales. Further, based on the board's experience, the adjustments for significant differences in water frontage on Lake Winnepesaukee should be more substantial than those made by the appraiser.

The board finds the use of a cost approach analysis in the appraisal would have been appropriate. The Property was improved with a newly constructed home as of the effective date of the appeal (April 1, 1998). The cost approach is especially applicable to newly constructed, unique properties. The Property in the instant case is such a property. The Taxpayers testified the home on the Property is not a cottage or camp, but is a large, well-constructed home built with top quality materials. It was built not as an investment, but as a family retreat with an eye toward keeping the Property in the family for several generations. The Taxpayers testified this

was a second home, not their primary residence. The Taxpayers' main objective was to construct a unique, well-built home that could be enjoyed by their family. As stated, the cost approach would be an appropriate approach to consider in estimating such a property. The cost approach embodies the principle of substitution especially for desirable, albeit limited market, properties such as this. "The principle of substitution is basic to the cost approach. This principle affirms that no prudent buyer would pay more for property than the cost to acquire a similar site and construct improvements of equivalent desirability and utility without undue delay." Appraisal Institute, The Appraisal of Real Estate, at 313 (11th ed., 1996)

It would have been necessary and appropriate for the Taxpayers' appraiser to make and discuss adjustments to land sales when estimating the site value for this island property. After the cost approach was completed, the appraiser could have commented on the weight the approach was given during the appraisal's reconciliation. The board agrees with the Town that the appraisal undervalued the Property; however, the board has not determined what the appropriate market value should be. The board is not obligated or empowered to establish a market value for the Property. See Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980).

The board notes the assessment on the land portion is significantly less than the purchase price of the site. The land portion of the assessment also includes several site improvements, such as the septic system and work done to situate the dwelling on the Property. The Town submitted a sale of an abutting, vacant tract of land, indicating the land portion of the assessment is not disproportionate or overassessed. The Town testified the .50 adjustment on the assessment-record card under the land-valuation section's influence factor was applied as a

discount to reflect the Property's island location. Waterfront properties on the mainland have influence several times higher.

Last, the board finds the Town's testimony and methodology of assessing the Property is consistent with the process used on other island properties. This testimony is evidence of proportionality, see Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982) .

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(a). 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(f). 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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage

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prepaid, to John A. and Gail M. Edie, Taxpayers; and Chairman, Board of Selectmen of
Meredith.

Date: May 11, 2000

Lynn M. Wheeler, Clerk

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CORRECTIVE ORDER

The board, on its own motion, corrects its May 11, 2000 decision in which, due to typographical error, the document's page headers read "Edie v. Town of Moultonborough" instead of "Edie v. Town of Meredith." A copy of the corrected decision is attached. The date of the decision, and the timelines that run from it, remain unchanged.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Lynn M. Wheeler, Clerk

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to John A. and Gail M. Edie, Taxpayers; and Chairman, Board of Selectmen of Meredith.

Date: June 9, 2000

Lynn M. Wheeler, Clerk

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