

**Children's Asset Trust**

v.

**Town of Moultonborough**

**Docket No.: 18505-00PT**

**DECISION**

The "Taxpayer," pursuant to RSA 76:16-a, appeals the "Town's" 2000 assessments of \$18,000 on each of three boat slips owned in Far Echo Harbor, which were assessed in relation to three separate lots.<sup>1</sup> For the reasons stated below, the appeal for abatement is granted.

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, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must

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<sup>1</sup> Lot 011-075-000, assessed at \$50,500 (0.2 acres of land -- \$32,500; "slip" -- \$18,000); Lot 011-077-000 assessed at \$134,700 (0.3 acres of land -- \$65,000, dwelling and shed -- \$51,700, "slip" -- \$18,000); and Lot 011-090, assessed at \$50,500 (0.2 acres of land -- \$32,500, "slip" -- \$18,000). The Taxpayer also own another parcel, Lot 011-65-000, assessed at \$527,400 (0.32 acres of land -- \$388,000, dwelling and shed -- \$139,400). On Section C of the appeal form filed with the board, the Taxpayer limited the "Property Appealed" to the three slips described above and the Taxpayer stipulated all property, except the slips, was properly assessed.

show 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) there are 50 slips in Far Echo Harbor for approximately 100 lots with homes and the slips can only be owned or rented by occupants, limiting their marketability;
- (2) a 21-foot boat size restriction applies to each slip;
- (3) in comparison to other slips or docks on the lake, Far Echo Harbor has no parking area, bathroom facilities or other amenities (e.g., gas, electricity and water supplies);
- (4) the rental value of each slip is only \$600 per year, resulting in a market value estimate, using an income approach, of far less than \$18,000; and
- (5) the Town's assessment is too high.

The Town argued the assessment was proper because:

- (1) the Town performed an update in tax year 2000 and redetermined slip values based on sales of lots with and without slips within Far Echo Harbor, as well as slip sales in other marinas;
- (2) the slips are more convenient to owners of lots within Far Echo Harbor than other marinas on the lake and therefore should command a premium;
- (3) slips have appreciated in value since 1996; and
- (4) the Taxpayer failed to meet its burden of proof.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment for each slip should be \$16,000.

The board takes notice of prior appeals filed by the Taxpayer and others for tax year

1996, when the Town also assessed the slips in Far Echo Harbor for \$18,000. The board addressed similar arguments and issues in those cases and then granted an abatement to \$13,500 for each slip. See, e.g., the Decision in BTLA Docket No. 16981-96PT (January 15, 1999).

The board appreciates the difficulties inherent in arriving at a proper assessment of the slips, given the absence of any sales data pertaining to the slips alone. These difficulties were noted in the board's prior Decision and remain relevant today.

The Town attempted to justify the higher assessed value by analyzing Far Echo Harbor lot sales with and without slips. The board has examined the sales data and analysis submitted by the Town (in Municipality Exhibit C), but finds it unpersuasive. The Town used a residual indicated site value approach, deducting the building value and an assigned value of \$18,000 to the slips. The board examined the seven 1999 and 2000 non-waterfront sales and found great disparity in the average indicated site value for the four lot sales without slips (\$70,400) and the three lot sales with slips (\$56,100). This disparity becomes smaller when the slip value of \$18,000 assigned by the Town is reduced; the size of the disparity indicates other important factors may be at work in determining the lot values in the Town's limited sample.

The Town also presented information regarding sales of slips in other marinas. The board has examined Municipality Exhibits D and E, which pertain to slip sales at Quayside Yacht Club. These sales reflect considerable price variation, depending on size of the slips and other factors (location, water depth, etc.). In Exhibit D, the Town shows four 16-foot slip sales with an indicated value of \$11,000, three 21-foot slip sales with an indicated value also of \$11,000 and five 20-foot slip sales with an indicated value of \$18,000. The board is unable to conclude, given the different attributes of slips in Far Echo Harbor and Quayside noted by the

Taxpayer, that this data supports an \$18,000 assessed value for each slip in Far Echo Harbor.

In the prior Decision, supra, the board reviewed many of the same arguments to conclude the Town's \$18,000 assessment for tax year 1996 was too high and reduced the assessment for each slip to \$13,500. Over four years, an assessment of \$16,000 represents a compound rate of appreciation of about 4.3 percent per year on the \$13,500 value established by the board for 1996. It also represents an approximate minus 10 percent adjustment to the higher assessed value (\$18,000) estimated by the Town for tax year 2000, an adjustment the board finds appropriate in light of the factors discussed above.

The board acknowledges this valuation problem is somewhat, but not entirely, unique. An analogy may be drawn, for example, to condominium communities where parking spaces are limited and restricted to owners or renters. Assessors in those jurisdictions have a parallel problem of valuing parking spaces independently of each owner's other property rights and must do so using available evidence. More generally, when portions of a "bundle" of property rights are transferred, those portions, like the slips in this case, need to be assessed properly despite the inherent difficulties.

In closing, the board is aware the abatement granted in this case (\$2,000 per slip; \$6,000 total for the Taxpayer) may seem negligible in amount, given the aggregate amount of taxable property owned by the Taxpayer (\$763,100 total assessed value of four lots; see fn. 1, supra). Nonetheless, the Town is obligated to arrive at fair and equitable assessments whether the amount in controversy is small or large. The board is mindful that the slips are but one component of value. While the Town's assessor may reason that slight decreases in slip values can be offset in future years by increases in other value components, this outcome is only

appropriate if it is supportable by legitimate and identifiable market factors, rather than simply an inclination to keep total assessed values unchanged after adjustment of the slip component of each lot.

If the taxes have been paid for tax year 2000, the amount paid in excess of \$16,000 per slip 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 2001. 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. See 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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Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Alfred J. Saltzburg, representative for the Taxpayer; Mary E. Pinkham-Langer, representative for the Town; and Chairman, Selectmen of Moultonborough.

Date: September 20, 2002

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Anne M. Bourque, Deputy Clerk