

DDM Living Trust, Docket No.: 18708-00PT

and

Dianne D. Maratea, Docket No.: 19389-00PT

v.

Town of Loudon

DECISION

The board has consolidated these two appeals for efficiency purposes as Ms. Maratea (hereinafter “Taxpayer”) is the owner or trustee of the five properties under appeal, located in the “Town” and identified as follows:

DDM Living Trust, Docket No.: 18708-00PT

Map 58, Lot 17, a 0.41-acre waterfront parcel on Clough Pond improved with a cottage assessed at \$73,500 (land \$59,400; buildings \$14,100);

Map 58, Lot 18, a 1-acre unimproved parcel on Berry Road assessed at \$22,100; and

Map 58, Lot 20, a 0.325-acre unimproved parcel on Clough Pond assessed at \$46,700.

Dianne D. Maratea, Docket No.: 19389-00PT

Map 58, Lot 19, a 0.284-acre unimproved parcel on Clough Pond assessed at \$37,900 (after abatement at the Town level); and

Map 58, Lot 21, a 1-acre unimproved parcel on Berry Road assessed at \$22,100.¹

For the reasons stated below, the appeals for abatement are granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 show the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

While the Taxpayer made distinct arguments about the five lots under appeal, her arguments can be generally summarized as follows.

¹ The Taxpayer neglected to list one of the lots (Lot 21) on the appeal document filed with the board. The Taxpayer did, however, file an abatement application with the Town on all five lots, including Lot 21, and testified the omission from the appeal document was an inadvertent error. At the hearing, the Town made no objection and indicated it was ready to proceed to defend the assessment on Lot 21. In these circumstances, the board finds no valid reason for excluding Lot 21 from the appeal. These facts distinguish Appeal of Town of Sunapee, 126 N.H. 214 (1985). In that case, unlike here, the taxpayer's failure to file an abatement application with the municipality for one of two lots (the "house lot") precluded appellate jurisdiction over the house lot and the municipality objected to consideration of an abatement of the house lot. Id. at 216.

The Taxpayer argued the assessments were excessive because:

- (1) the lots all have steep topography limiting their development potential and utility; and
- (2) sales of other properties, both waterfront and nonwaterfront, in the area with less severe topography support lower assessments.

The Town argued the assessments were proper because:

Lots 18 and 21

- (1) the sale of several “back lots,” if time adjusted, support the Town’s assessed value; and
- (2) the Taxpayer’s comparables are not similar to the Taxpayer’s “back lots” because they do not have proximity to, and a view of, Clough Pond as do the Taxpayer’s lots.

Lots 17, 19 and 20

- (1) while no land-only Clough Pond sales had occurred, the Town’s land value for the lots was extracted using a land residual method derived from the sale of an improved property (Map 58, Lot 82), and supports these assessments; and
- (2) Lot 19 received a 25% adjustment for the restriction that any septic system would have to be placed off the lot.

During the hearing, testimony was presented by the Taxpayer that a plot plan had been submitted to the Town several times to correct the Town’s records as to the acreage of Lots 19 and 20, but no action had yet been taken. The board kept the record open for the Town to submit revised assessment-record cards to reflect the correct acreage of those lots. The Town did submit revised assessment-record cards for Lots 19 and 20 correcting the acreage to 0.284 and 0.325, respectively, reducing the Lot 19 assessment by \$200 and making no assessment reduction for Lot 20.

Following the hearing, the board, on its own, viewed the five lots under appeal and the comparables submitted by both parties in the immediate neighborhood (Town Tax Map 58).

Board's Rulings

Based on the evidence, the board finds the assessments should be as follows:

Map 58, Lot 17	\$64,100 (land \$50,000; buildings \$14,100)
Map 58, Lot 18	\$17,000
Map 58, Lot 19	\$30,000
Map 58, Lot 20	\$30,000
Map 58, Lot 21	\$17,000

Lots 17, 19 and 20

As stated earlier, the Taxpayer has the burden of proof to show the assessments are improper. The premise for the burden resting with the Taxpayer is the presumption that the Town's assessments were calculated from market-based data applied in a consistent fashion. See, generally, RSA Chapter 75; and Sirrell v. State of New Hampshire, 146 N.H. 364 (2001).

For the reasons that follow, we find in this case the Town's assessment methodology pertaining to the five lots and, to some extent, to the comparables submitted, was inconsistent and failed to recognize the extreme topographical features of all five lots.

As the Town stated, there were no land-only waterfront sales and only one improved waterfront sale on Clough Pond to use as comparables. The board viewed Lot 82, which sold in October of 2000 for \$93,000. This lot is split by Clough Pond Road with the improvements being located on the smaller portion of the lot adjacent to Clough Pond; the remaining unimproved land is on the opposite side of the road and is relatively flat and usable. The Town

assessed the land portion of Lot 82 at \$60,000. Consequently, based on that sale and the Town's estimate of the improvements on Lot 82, the board concludes Clough Pond waterfront lots with good utility, access and minimal topographical hindrances have a value of approximately \$60,000.

These characteristics are not present in any of the Taxpayer's three waterfront lots. As the Taxpayer testified, and as the board saw on its view, the Taxpayer's lots are extremely steep with limited access to the waterfront. In fact, after the view of the comparables and a drive around the entire perimeter of Clough Pond, the board concluded the Taxpayer's lots are in all probability the most difficult lots to develop and use.

The board does not understand the Town's methodology in applying a 20% topography adjustment to the improved lot (Lot 17), but none to Lots 19 and 20, which, if anything, have worse access and topography than Lot 17. During the hearing, the Town's assessor, represented by Ms. Loren Martin, also agreed the lack of a topography adjustment on Lots 19 and 20 was inconsistent. Initially, the board attempted to make adjustments based on the Town's methodology but, since the methodology was inconsistent, this approach proved unworkable. Without much market data, other than the sale of Lot 82 and the board's own knowledge and experience² to utilize, the board has estimated Lot 17 would have approximately a \$10,000 less

² 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

desirable contributory site value than the Town's indication from the Lot 82 sale.

Consequently, the board is ordering an abatement of Lot 17 to reflect a lower land value of \$50,000.

Lots 19 and 20 are essentially undeveloped (Lot 19 was formerly developed with a house which had burned down). The evidence and the board's view supports the conclusion that Lots 19 and 20 would have similar significant development costs that any purchaser would factor into their consideration. While no specific estimate was provided by either party as to abnormal site costs, the board has estimated those costs to be in the range of \$20,000 per lot. These costs involve developing access to Berry Road and development of building sites and areas (either on or off site) to accommodate septic systems. While actual costs may exceed the board's estimate, no specific evidence was submitted by the Taxpayer to quantify the costs; the board's own conservative estimate is based on the board's experience and view of the lots. Consequently, the board finds the market value of Lots 19 and 20 to be approximately \$30,000 each.

Lots 18 and 21

As with the other lots, the board's view, the Taxpayer's testimony and photographic evidence supports the conclusion that these two lots have some of the most severe topography of the "back lots" in the Clough Pond area. In this case, however, there were several sales submitted by both parties to support their claims of the market value for these rear lots.

The board finds the adjoining Lot 22, which sold in April 2002 for \$37,900, and the sale

to evaluate evidence).

of Lot 64, which sold in May of 2002 for \$29,000, to be the best comparables to estimate the market value of Lots 18 and 21. The other sales submitted by the parties do not have similar proximity and view potential as do these two comparables.

The board, in particular, reviewed Lot 22 and its topography. While Lot 22 has subsequently been built upon, the board concludes the topography prior to site work, while extreme, was not as extreme as Lots 18 and 21. The grade of the lot where access was developed from Range Road was not as severe as the Taxpayer's lot and the width (amount of frontage) of Lot 22 compared to Lots 18 and 21 allow for a driveway to be put in diagonally across the slope, lessening its steepness. Lot 64, while smaller than either of the Taxpayer's two back lots, has moderate topography and very immediate access to Berry Road. Thus, the board finds both Lots 22 and 64 superior to the Taxpayer's "back lots." The board also reviewed the Taxpayer's own listing of Lots 18 and 21 collectively for \$82,500 and concludes the listing price is neither realistic nor reflective of the inherent topographical limitations of the lot. Thus, the board gave the listing price little or no weight.

The Town in assessing these two lots gave a 15% topography adjustment compared to none for Lots 22 and 64. Based on the board's experience and knowledge and the extreme site work that would need to be done to provide reasonable access to the Taxpayer's lots, we conclude a topography adjustment of 30% is more appropriate, resulting in a reduced assessment of \$17,000 for each lot.

In summary, the board finds the Taxpayer carried her burden by showing how the Town did not reasonably consider the severe topographical limitations of all the lots and the inconsistencies in the Town's methodology. For these reasons, the board has granted the

Taxpayer the abatements reflected in the specific assessments determined on page 4 of this decision.

Refund

If the taxes have been paid, the amounts paid in excess of the values listed above 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 and 2002. 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.

Rehearing

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

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: Dianne D. Maratea, Taxpayer; Loren J. Martin of Nyberg Purvis and Associates, representative for the Town; and Chairman, Selectmen of Loudon.

Date: October 29, 2002

Anne M. Bourque, Deputy Clerk

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and

Dianne D. Maratea, Docket No.: 19389-00PT

v.

Town of Loudon

ORDER

This order responds to the “Taxpayer’s” letter for clarification filed on November 7, 2002. The Taxpayer inquires as to what effect the board’s ordered abatement for tax year 2000 on Lots 19 and 20 has on the tax year 2002 assessment of those lots since they were merged and in the same ownership prior to April 1, 2002. RSA 76:17-c, I, addresses the Taxpayer’s concern.

RSA 76:17-c, I

I. Whenever the board of tax and land appeals, pursuant to RSA 76:16-a, or the superior court, pursuant to RSA 76:17, grants an abatement on the grounds of an incorrect property assessment value, the selectmen or assessors shall thereafter use the correct assessment value, as found by the board or the court, in assessing subsequent taxes upon that property, until such time as they, in good faith, **reappraise the property pursuant to RSA 75:8 due to changes in value**, or until there is a general reassessment in the municipality. (Emphasis added).

The board's October 29, 2002 decision ("Decision") relates to the legal status of Lots 19 and 20 as of April 1, 2000. At that time, title to Lot 19 was held by Dianne D. Maratea while title to Lot 20 was held by DDM Living Trust. Because, as of April 1, 2002, the lots were merged and under one title, the Decision does not control the tax year 2002 assessment because the Town must reappraise the property pursuant to RSA 75:8 as the result of the change in the legal status of the lots.³ Hopefully, however, the Town will consider the general findings of the

³RSA 75:8

I. Annually, and in accordance with state assessing standards, the assessors and selectmen shall adjust assessments to reflect changes so that all assessments are reasonably proportional within that municipality. All adjusted assessments shall be included in the inventory of that municipality and shall be sworn to in accordance with RSA 75:7.

II. Assessors and selectmen shall consider adjusting assessments for any properties that:

- (a) They know or believe have had a material physical change;
- (b) Changed in ownership;
- (c) Have undergone zoning changes;
- (d) Have undergone changes to exemptions, credits or abatements;
- (e) Have undergone subdivision, boundary line adjustments, **or**

mergers; or

- (f) Have undergone other changes affecting value.
(Emphasis added).

Decision relative to Lots 19 and 20 and, if still applicable to the single merged lot in 2002, reflect them in the revised assessment.

If the Taxpayer is not satisfied with the tax year 2002 assessment, she may again timely file an abatement application with the Town and appeal to the board.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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: Dianne D. Maratea, Taxpayer; Loren J. Martin of Nyberg Purvis and Associates, representative for the Town; and Chairman, Selectmen of Loudon.

Date: November 21, 2002

Anne M. Bourque, Deputy Clerk