

**Neil and Eileen Underwood**

**v.**

**Town of Greenland**

**Docket No.: 19596-02PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$574,500 (land \$327,100; buildings \$247,400) on a 37.60-acre lot with a single-family home (the “Property”). The Taxpayers also own, but did not appeal, four other properties in the Town. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 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 own four other properties in the Town. When a taxpayer owns more than one property in a municipality, but chooses to appeal the assessment on some but not all of those properties, the board must consider the assessments on the taxpayer’s nonappealed properties in

the same municipality. Appeal of the Town of Sunapee, 126 N.H. 214, 217 (1985). A taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of the properties is disproportionate. “Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.” Id. See also Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954) cited in Sunapee. At the hearing, the parties stipulated the other assessments were not in contention. Therefore, the board will focus on the Property.

The Taxpayers argued the assessment was excessive because:

- (1) the 20% condition factor adjustment applied to the land is too low, given the access, power and potable water problems identified, and realistic estimates for the costs to cure these problems total approximately \$150,000;
- (2) the Town previously relied on comparable sales which sold for prices in excess of their true market values;
- (3) several comparables subject to tidal water flooding received a 5% land adjustment, but the Property did not;
- (4) the building assessment is not in dispute; and
- (5) after making the appropriate adjustments to the land value of the 5.0-acre section of the Property, the total ad valorem assessment for this portion should be reduced to \$472,100, and, when added to the \$4,600 current use value for the remaining 32.6-acre± portion of the Property, should result in a total assessment of \$476,700.

The Town argued the assessment was proper because:

- (1) the level of assessment in the Town was 92% for tax year 2002;
- (2) in a “worst case” scenario, it could cost approximately \$150,000 to solve the access, power and potable water problems, but in a “best case” scenario would cost much less (approximately

\$90,000), based on investigations made by the Town with the Taxpayers' construction company and another well drilling company;

(3) the privacy and water frontage qualities of the Property make its market value well in excess of the equalized assessment;

(4) the Town made no 5% tidal water adjustment to the Property because the Property has excess land, but the comparables do not;

(5) the Town has reduced the Property's assessment by more than \$100,000 in recognition of the issues raised by the Taxpayers; and

(6) the Taxpayers failed to satisfy their burden of proof.

### **Board's Rulings**

The Property consists of a five-acre section with the improvements not enrolled in current use and a 32.6-acre± section encumbered with a conservation easement and assessed in current use. Because the Taxpayers are not aggrieved by the ad valorem value on the section encumbered by the conservation easement and assessed in current use, the board's focus is on the ad valorem value of the five acres and improvements.

The Taxpayers requested the board to take official notice of their tax abatement appeal of the previous year (Docket No.: 19285-01PT) ("2001 Appeal"), including all exhibits. The board has thoroughly reviewed all exhibits from the 2001 Appeal as well as the board's "Decision" in that appeal. The board finds that, for some of the same reasons stated in the 2001 Appeal, the Taxpayers failed to show the Property was disproportionately assessed and an abatement is warranted.

The board acknowledges the Property is unique and because of this uniqueness the board looks to the reasonableness of the Town's methodology when it determined the Property's assessment. As in the 2001 Appeal, the Taxpayers focused their arguments on three issues: 1) access; 2) power; and 3) the salted well (Taxpayer Exhibit 1). The board will address each of these issues separately.

Regarding the access issue, the Taxpayers argued, as they did in the 2001 Appeal, the Property does not have year-round access and the cost to bring year-round access from Meloon Road to the Property would be approximately \$109,500 based on an estimate from Bayside Paving, LLC. Currently the Property has its access through other property owned by the Taxpayers at 150 Bayside Road and if the Property was sold the Taxpayers have several options to provide continuing access. One possible scenario would be for the Taxpayers, who control this historical access, to grant any prospective purchaser use of the current access for a short period of time, such as one to five years. This would enable the new owners time to construct a permanent access from Meloon Road at their expense. Enabling any new purchaser to buy the Property without having to construct 2,600 feet of year-round roadway as soon as they purchased the Property would likely enhance the pool of potential purchasers and, as a consequence, may shorten the length of time necessary to market the Property.

The Taxpayers' second (relatively minor) issue concerned providing an adequate and more typical electrical service to the Property. The dwelling currently has a generator for electrical supply which the Town accounted for in the 15% functional obsolescence on the dwelling and part of the 20% adjustment to the primary site value. The board finds this issue would most likely be resolved at the time the access issue is addressed.

Addressing the Taxpayers' third issue regarding a potable water supply, the board finds there is, as stated by the Town, the potential for a second drilled well farther inland from the shoreline. The board acknowledges, as the Taxpayers pointed out, this second well may cost several thousand dollars and still not yield a potable water supply. However, given the fact the Taxpayers' comparable properties at 2 and 4 Bayside Road have a potable water supply from drilled wells may indeed signal at least the potential for a potable water supply at some other location on the Property. Prior to spending the \$25,000 to \$35,000 mentioned by the Taxpayers, the board finds a prudent and knowledgeable purchaser or seller would pursue less expensive possibilities first, such as a second well site.

In total, the board finds the Taxpayers' estimate of \$150,000 as the cost to cure the three issues to be a "worst case" scenario as suggested by the Town. Further, the board finds the Town's attempt to recognize the impact of the three issues through adjustments to the land and building of slightly more than \$100,000 to be reasonable. The adjustments include the -20% adjustment to the land assessment portion which equates to approximately \$60,000 and the functional depreciation allowance applied to the dwelling of approximately \$43,200. Therefore, while the costs to provide the desired services to the Taxpayers may be substantial, they have been accounted for in a reasonable manner by the Town. The board finds no further adjustments are warranted.

The Taxpayers raised issues concerning the Town's inconsistent assessment practices and used comparable assessments at 12 Meloon Road and 2 and 4 Bayview Terrace as examples. While the Town's representatives could not explain definitively why the comparable properties received a 5% adjustment for lots being partially under water, a comparison of the Property's tax map delineation (Taxpayer Exhibit 1) and the comparables' tax map (Municipality Exhibit A)

shows the lot lines of the Bayview Terrace properties running into Great Bay. However, even if this distinction is not warranted, justice requires that an order of abatement not relieve the Taxpayers from bearing their share of the common burden of taxation despite any error in the method of determining the amount of that share. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2004). For example, proving the municipality lacked a “sound methodology” when it made the assessment is not sufficient, unless there is proof of disproportionality. Id. at 367-68. “In an abatement case, the taxpayer has the burden of proving by a preponderance of the evidence that the property at issue was assessed disproportionately to other property in the town.” Appeal of Sokolow, 137 N.H. 642, 643 (1993).

As in the 2001 Appeal, the Taxpayers did not present any credible evidence of the Property’s market value in the instant case. 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 general level of assessment in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

As previously discussed, the board acknowledges the Property is unique both in its location and its features; however, the board finds the Town has made a reasonable attempt to assess the Property and to recognize the issues raised by the Taxpayers. Therefore, the board finds the Property is not disproportionately assessed and no abatement is warranted.

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(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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Neil & Eileen Underwood, Post Office Box 99, 150 Bayside Road, Greenland, New Hampshire 03840, Taxpayers; Chairman, Board of Selectmen, Town of Greenland, Post Office Box 100, Greenland, New Hampshire 03840; and Todd Haywood, Granite Hill Municipal Services, 168 Hoit Road, Concord, New Hampshire 03301.

Date: October 11, 2004

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Anne M. Stelmach, Deputy Clerk