

**Devereux and Kim Davidson**

**v.**

**Town of Meredith**

**Docket No.: 20024-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$341,800 (land \$75,100; buildings \$266,700) on Map U26, Lot 77, a single-family residence (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the living area of the house is listed incorrectly on the assessment-record card;
- (2) the exterior of the dwelling is vinyl covered not wood shingles as shown on the assessment-record card;

- (3) the basement is overvalued;
- (4) the Property's adjusted base rate of \$100.78 is significantly higher than that of similar properties in the neighborhood;
- (5) the Property's assessment is widely disproportionate compared to the assessments of the other properties in the neighborhood;
- (6) the Property was listed for sale in 2004 for a year at \$299,000 but did not receive any offers;
- (7) the Property does not have a dock or boat slip reducing its value substantially; and
- (8) the Property's 2003 assessed value should be \$110,000 based on an assessment of \$130,000 reduced by \$20,000 for the neighbor's car and well being located in the adjoining "paper street".

The Town recommended the assessment should be revised to \$277,600 and argued the revised assessment was correct because:

- (1) the revised assessment-record card corrected the living area, reduced the dwelling grade to average and reduced the contributory value of the basement;
- (2) an analysis using three comparable sales indicates a market value for the Property on April 1, 2003 of \$297,500;
- (3) applying the 2003 median equalization ratio of 0.921 to the indicated market value of \$297,500 indicates an assessed value of \$274,000 which is supportive of the revised assessment of \$277,600; and
- (4) the Taxpayers' proposed assessed value of \$110,000 is significantly lower than all other properties in the neighborhood.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$224,100 (land \$63,000; buildings \$161,100). This revised assessment is based on increasing the topography

adjustment on the lot from 0.95 to 0.80 and applying an additional 20% functional depreciation to the dwelling for its simple contemporary style and having only two bedrooms and one and one half baths.

The board finds both the Town's original assessment and its revised assessment overstate the market desirability of the Property. The photographs and interior description of the Property and the Taxpayers' unsuccessful exposure of the Property to the market indicate it has features that reduce its desirability to the general real estate market. Specifically, the board finds the small size of the lot (10,500 square feet) with on-site water and septic reduces its utility and desirability in the market relative to other larger lots in the neighborhood. Further, the board finds the plain, owner-built contemporary style of the house and the plain fenestration limits its desirability in the market. The review of the assessment-record cards submitted by both parties as comparables indicate the Property is unique relative to the more typical cape-style "contemporary" vacation style homes that are generally marketed in this area. Based on the board's experience, the board has applied an additional 20% functional depreciation to reflect both the building's simple style and its two bedroom, one and one half bath layout which is inferior to most properties in the neighborhood.

The board reviewed the Town's appraisal summary report (Municipality Exhibit A) but was unable to place any reliance on its indicated market value for several reasons. First, as the Taxpayers pointed out, the Property does not have a boat slip or dock associated with it to be sold. The Town adjusted the comparables, which all had boat slips, \$25,000 for the Property's lack of a boat slip. Based on the evidence submitted by the Town, the board finds this is the very minimum that such boat slips were worth in 2003 and a more likely adjustment would be approximately \$40,000. Further as the board has found above, no adjustment was made for the

Property's unique, simple contemporary design which we find is significantly different and less desirable than the comparables. Last, while the Town made some adjustment to the comparables for their larger lot size and desirability, the board finds it is insufficient given the Property's small size, all on-site utilities, and the dwelling's close proximity to adjoining lots and paper street. While it is difficult from the evidence submitted to quantify the magnitude of these adjustments, the lack of such adjustments causes the board to place no weight on the indicated market value recommended by the Town. Further, the Town's indicated market value of \$297,500 is very similar to the Taxpayer's \$299,000 asking price in 2004 to 2005 for which no offers were made. This is some additional indication the Town's market value estimate is excessive.

The board gives no weight to the Taxpayers' construction appraisal that estimated the market value as of August 2002 at \$170,000. As the Town pointed out, the appraisal contained inadequate time trending adjustments, no adjustments for differences in age of buildings and no adjustments for proximity or access to the lake (comparable number one). Also, the appraisal was done for lending purposes which, in most cases, conservatively estimates a property's value.

The board also places no weight on the Taxpayers' proposed assessed value of \$110,000 as they presented no market evidence to support such a significant reduction. As the Town pointed out, a reduction to such a low assessed value would have the Property assessed significantly below the assessed value of other properties within the Taxpayers' neighborhood.

In conclusion the board finds the assessed value of \$224,100 and the indicated market value of \$243,300 ( $\$224,100 \div 0.921$ ) results in an assessment, given all the evidence provided in this case, that is proportional. Two often cited observations on determining market value apply in this case. "Given all the imponderables in the valuation process, '[j]udgment is

the touchstone.” Public Service Company v. Town of Ashland, 117 N.H. 635, 639 (1977). “It has been said that ‘the search for fair market value is a snipe hunt carried on at midnight on a moonless landscape.’” Fusegni v. Portsmouth Housing Auth., 114 N.H. 207, 211 (1974).

If the taxes have been paid, the amount paid on the value in excess of \$224,100 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Kim & Devereux Davidson, 33 Park Street, #10, Malden, MA 02148, Taxpayer; and Chairman, Board of Selectmen, Town of Meredith, 41 Main Street, Meredith, NH 03253.

Date: 1/18/06

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Melanie J. Ekstrom, Deputy Clerk