

Frank A. & Deborah C. Lundblad – Docket No.: 20186-03PT
Alice L. Clark Revocable Trust – Docket No.: 20237-03PT
Roland & Grace Cherwek – Docket No.: 20346-03PT
Brian D. Hogan – Docket No.: 20394-03PT
Catanzaro Realty Trust – Docket No.: 20531-03PT

v.

Town of Ossipee

CONSOLIDATED DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessments on Frank A. and Deborah C. Lundblad, Docket No.: 20186-03PT - \$342,100 (land \$299,300; buildings \$42,800) on Map 32, Lot 89, a single family, waterfront home on 0.356 acres; Alice L. Clark Revocable Trust, Docket No.: 20237-03PT - \$343,500 (land \$297,900; buildings \$45,600) on Map 32, Lot 90, a single family, waterfront home on 0.328 acres; Roland and Grace Cherwek, Docket No.: 20346-03PT - \$380,200 (land \$303,500; buildings \$76,700) on Map 32, Lot 87, a single family, waterfront home on 0.436 acres; Brian D. Hogan, Docket No.: 20394-03PT for Map 32, Lot 91, \$385,800 (land \$291,500; buildings \$94,300) a single family, waterfront home on 0.253 acres; and Map 32, Lot 94 - \$203,600 (land \$193,600; building \$10,000) a foundation on 1.01 acres; and Catanzaro Realty Trust, Docket No.: 20531-03PT - \$358,100 (land \$273,000; buildings \$85,100) on Map 32, Lot 80, a single family, waterfront home on 0.236 acres (the

“Properties”). For the reasons stated below, the appeals for abatement are granted to the Town’s recommended revised assessments.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties’ assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden but only to the amount of the Town’s recommended assessments.

At the hearing, the Taxpayers in each case and the Town agreed it was prudent and reasonable for the board to consolidate these cases for hearing and to issue a consolidated decision because the issues argued were essentially the same in each case. Therefore, the board is issuing this consolidated decision.

The Taxpayers argued the assessments were excessive because:

- (1) there has been substantial recent flooding in the neighborhood, which is located in a flood plain, thereby occasionally limiting access to the Properties;
- (2) a large sandbar near the entrance to Cassie Cove and a large amount of boat traffic in the cove hinders the enjoyment of the Properties;
- (3) the Properties should have been compared and assessed similarly to other properties located in coves and channels rather than to “big lake” properties; and
- (4) independent appraisals of the Clark and Hogan properties indicates they are significantly overassessed.

The Town argued the assessments should be revised and the revised assessments were proper because:

- (1) different base site values were set for different neighborhoods and then the base values were adjusted for various factors;
- (2) the Clark and Hogan appraisals have some flaws that discredit their estimates of value; and
- (3) the revisions the Town has proposed will result in more proportionate assessments for the Properties.

Board's Rulings

Based on the evidence, the board finds the Properties' assessments should be revised to the Town's recommended revised assessed values. The revised assessments shall be as follows; Frank A. and Deborah C. Lundblad, Docket No.: 20186-03PT - \$330,600; Alice L Clark Revocable Trust, Docket No.: 20237-03PT - \$332,000; Roland and Grace Cherwek, Docket No.: 20346-03PT - \$368,500; Brian D. Hogan, Docket No.: 20394-03PT - \$374,600 on Map 32 Lot 31 and \$191,600 on Map 32, Lot 94; and Catanzaro Realty Trust, Docket No.: 20531-03PT - \$321,900. The adjusted assessments are based on the Town's recommendation that in each case the "condition" adjustment on the land valuation section should be lowered. For the Lundblad, Clark, Cherwek and the Hogan property on Map 32, Lot 91 the Town recommended the land condition factor be changed from 104% to 100%. For the Hogan property on Map, 32, Lot 94 the Town recommended the factor be changed from 80% to 75% and for the Catanzaro Realty Trust property the Town recommended a change from 98% to 85%.

The board finds the Taxpayers presented no compelling or probative evidence of the Properties' market values. In order to prove the Properties were disproportionately assessed, the Taxpayers should have made a showing that the market value of each of the Properties is something substantially different than the Town's assessed value divided by its equalization

ratio, that is the test for proportionality. Market value includes land and buildings in total, not as separate entities, because that is how the market buys and sells real estate. Buyers do not pay a separate price for the land and then another price for the building; they buy the real estate in its entirety.

The Taxpayers argued independent appraisals of the Clark and Hogan properties performed by Loon Point Appraisal Services (the “Appraisals”) indicated the assessments of the Properties are excessive. They stated the Properties are in similar locations and should have lower assessments based on the Appraisals’ market value estimates. In response, the Town testified the Appraisals were flawed and their estimates of value should be given no weight. The board concurs. The Appraisals’ most significant flaw is the lack of any “location” adjustment to comparable sales 1 and 3 and the size of the adjustment to sale 2. Rather than using sales of properties in Cassie Cove, the appraiser used sales of properties located on Broad Bay Channel (the “Channel” properties). The testimony at hearing was the Channel properties are subject to greater boat traffic in a narrow channel with a “no wake” zone, reducing their market value. It would have been more appropriate given the sales that occurred in Cassie Cove (Map 32, Lots 81 and 93) for the appraiser to have used the more similarly located properties. The Town testified a comparison of the sale prices of the Channel properties to Cassie Cove property sales indicates an appropriate location adjustment should be in the \$90,000-\$100,000 range. The appraiser made no adjustment to comparable sales 1 and 3 and only a nominal adjustment to sale 2. The board finds the appraiser’s use of the Channel sales without an appropriate location adjustment versus the use of the comparable sales available in Cassie Cove to be inappropriate and inexplicable. Because the appraiser gave the most weight to the Channel sales (comparables 1 and 3) “due to their location” we find the Appraisals’ market value estimates to be inaccurate and low and, thus, are given no weight.

Further, the appraiser did not explain or provide a basis in the Appraisals for the 0.5% per month rate of appreciation for the market conditions (time) adjustment he utilized. The Town testified that a review of all the sales during the revaluation indicated a general, Town-wide rate of appreciation of 1.5% per month, significantly higher than the appraisers estimate. Without some explanation to support a lower adjustment, the board can give the appraiser's conclusion little credence. This further undermines the Appraisals' estimates of value.

The Taxpayers argued the Properties' location in Cassie Cove is negatively impacted by the fact the entrance to the cove is dominated by a large sand bar that is frequented by boaters and swimmers who do not live in the cove. Because there are no boat speed restrictions such as a no-wake zone in the cove, the boaters' activities cause a significant amount of large wave issues for the Properties' docks and beaches. The Taxpayers, however, did not provide any market related data or any estimate of the impact on the Properties market values for these conditions.

Further, the Taxpayers testified several of the properties in better locations on the "big lake" section of Ossipee Lake have unexplainably lower land condition adjustment factors than the Properties. The Town responded to this argument by noting that while the properties located in neighborhoods such as "Long Sands" on the main portion of Ossipee Lake may have lower land condition adjustment factors they have a more than offsetting higher base land rate and, therefore, higher actual land assessments.

In addition, the Taxpayers testified some of the buyers of properties (for example Map 32, Lot 92, a sale at \$468,000 in August 2003) in Cassie Cove were uninformed and did not realize the problems associated with properties located within the cove when they purchased their properties. The board finds this assertion to be unsubstantiated and speculative. If a

property is being marketed by a professional real estate agent, the agent is obligated to disclose all value influencing factors during the showing of any property that is for sale. The board assumes most buyers, through due diligence, become knowledgeable of what they are purchasing when they are looking at purchasing real estate. The Town, during its review of the PA 34 forms that are filled out by the grantees in real estate transfers, testified there were no indications of buyers being uninformed or misinformed or that the sales were not arm's-length transactions. Consequently, the board finds the three sales in Cassie Cove are the best evidence of this area's market value (with the exception of Map 32 Lot 92 which all parties agreed sold somewhat in excess of market value) and are reflective of the cove's positive and negative attributes and supportive of the revised assessments.

For all these reasons, the board finds the Taxpayers failed to prove the Properties' assessments should be revised to some value other than the Town's recommended revised assessed values.

If the taxes have been paid, the amount paid on the value in excess of the following: Frank A. and Deborah C. Lundblad, Docket No.: 20186-03PT - \$330,600; Alice L Clark Revocable Trust, Docket No.: 20237-03PT - \$332,000; Roland and Grace Cherwek, Docket No.: 20346-03PT - \$368,500; Brian D. Hogan, Docket No.: 20394-03PT - \$374,600 on Map 32, Lot 31 and \$191,600 on Map 32, Lot 94; and Catanzaro Realty Trust, Docket No.: 20531-03PT - \$321,900 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. The Town shall use the ordered assessments for tax years 2003 and 2004. The Town performed a Town-wide statistical update on all properties in 2005; therefore, pursuant to RSA 76:17-c, the ordered assessments do not apply to tax years subsequent to 2004.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Frank A. and Deborah C. Lundblad, 38 Willow Grove Rd, Brunswick, ME 04011, Taxpayers; William A. Clark, 221 Middle Road, Portsmouth, NH 03801, Taxpayer; Roland and Grace Cherwek, 9 Keniston Road, Lynnfield, MA 01940, Taxpayers; Brian D. Hogan, 28 Cassie Cove Road, Center Ossipee, NH 03814, Taxpayer; Carol Catanzaro, 26 Hancock Street, Malden, MA 02148, representative for the Taxpayer; David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, representative for the municipality; and Town of Ossipee, Chairman, Board of Selectmen, PO Box 67, Center Ossipee, NH 03814.

Date: 10/12/06

Anne M. Stelmach, Clerk