

Richard H. Cote and Susette L. Milnor, Docket No.: 20269-03PT
Richard H. Cote, Docket No.: 20270-03PT

v.

Town of Lee

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessments of the following:

Docket No.: 20269-03PT - \$151,000 (land \$126,200; buildings \$24,800) on a 0.95-acre lot at 4 Owl Lane (Map 28, Lot 2, Sublot 200); and

Docket No.: 20270-03PT - \$252,100 (land \$129,600; buildings \$122,500) on a 1.23-acre lot at 6 Owl Lane (Map 28, Lot 2, Sublot 100) (collectively, the “Properties”).

Because of the commonality of issues and the interrelationship of the Taxpayers, these cases were consolidated for hearing.

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. For the reasons that follow, the appeals for abatement are granted.

Parties' General Arguments

Overall the Taxpayers argued the assessments were excessive because:

- (1) the neighborhood rating change from "D" to "F" during the revaluation was unjustified because Owl Lane is a privately-maintained, gravel road that receives reduced Town services; and
- (2) the condition factor for the land was inappropriately increased from 100 to 150 because both Properties have limited water access due to the steep river bank

The Town argued the assessments were proper because:

- (1) in 2004, a review of the 2003 revaluation revealed some inconsistencies that needed to be corrected in the application of neighborhood factors to some properties, but the Taxpayers' Properties were not affected by the corrections; and
- (2) no abatements are warranted.

Taxpayers' Property-Specific Arguments

Docket No.: 20269-03PT (Map 28, Lot 2, Sublot 200, 4 Owl Lane)

The Taxpayers argued the assessment was excessive because:

- (1) the quality of the waterfront is significantly poorer than most properties on Owl Lane;
- (2) the dwelling lacks its own well and obtains its water supply from 6 Owl Lane;
- (3) the septic system, through an easement, is partially located on the property at 6 Owl Lane; and
- (4) the proper assessment should be \$93,627.

Docket No.: 20270-03PT (Map 28, Lot 2, Sublot 100, 6 Owl Lane)

The Taxpayer argued the assessment was excessive because:

- (1) an appraisal of 6 Owl Lane estimated the market value on January 8, 2003 to be \$216,000;
- (2) the various easements reduce its value;
- (3) the dwelling's location, further from the river than most other properties in the neighborhood, restricts its view; and
- (4) the proper assessment should be \$196,540.

Board's Rulings

4 Owl Lane

Based on the evidence and testimony, the board finds the proper assessment for 4 Owl Lane is \$142,600.

The Town must annually and in accordance to state assessing guidelines, review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town. RSA 75:8. See also RSA 73:10, RSA74:1 and RSA 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), fair and proportionate taxation can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The board finds the Town's review and revision of its neighborhood factors to be in keeping with its obligations under RSA 75:8. The Taxpayers argued the neighborhood rating change from "D" to "F" was unjustified for the Properties. The Town stated its 2004 review of all properties on the river found the inconsistencies in the 2003

reevaluation did not involve 4 Owl Lane, and therefore no further change to the neighborhood rating is warranted.

The Taxpayers discussed the easements involving the well and septic system that affected 4 Owl Lane. This lot does not have a well and receives its water, through an easement, from a well located on the abutting property (6 Owl Lane). Without the easement and the opportunity to have water service available, there is a question as to whether 4 Owl Lane could be utilized to the extent it is presently. The board finds, based on its experience, the lack of a dedicated, on-site water supply is a negative influence factor the general real estate market would recognize. To account for this situation, the board has reduced the land condition factor from 150 to 140. This revision lowers the land value to \$117,800 (rounded) and the total assessment to \$142,600.

Further, the Taxpayers testified the Property's value is reduced due to the fact that, due to an easement, the septic system for the Property is partially located on 6 Owl Lane. The board finds there is no evidence the value of the Property was negatively impacted by the septic easement. In fact, it is more reasonable to conclude 4 Owl Lane benefits by the septic easement on 6 Owl Lane.

In addition, the board finds the Taxpayers' testimony that the market values of the Properties are reduced by the fact that Owl Lane is a private road rather than a Town-maintained road is not supported by any market data. Some evidence of this lack of impact on value is the fact the Taxpayers' appraiser, in his appraisal of 6 Owl Lane, although mentioning the fact the Property is on a private road, made no adjustment to the market value for this fact.

6 Owl Lane

In support of his position, the Taxpayer submitted two pages of an appraisal performed for refinancing and stated this was a good indication of market value. The appraiser estimated

the market value of 6 Owl Lane in January 2003 at \$216,000. The board finds the fact the appraiser made no adjustment for market appreciation to be a flaw in the appraiser's methodology, as well as inconsistent with a statement contained in the appraisal. The first page of the uniform residential appraisal report states, "Although demand for low and mid-priced housing remains good, an oversupply of upper-priced homes (\$250,000+) now exists throughout the area." The board finds this statement to be in conflict with the appraiser's adjustment grid. If the appraiser found the market value of the Property to be \$216,000, it would be classified in his own terms as a low or mid-priced property and, therefore, given the demand for these houses, some appreciation factor should have been applied for market conditions of similar properties. The appraiser made no such adjustment.

The Taxpayer argued the easements benefiting 4 Owl Lane negatively impact the market value of 6 Owl Lane. However, the appraiser again, while noting the apparent easements in the appraisal report, did not find it necessary to make an adjustment to market value to reflect the presence of the various easements. In fact, the appraiser states, "Easements described in deed have no significant adverse affect on value."

The Taxpayer testified the dwelling located on 6 Owl Lane is set back from the river and is not afforded the views enjoyed by most other neighborhood properties along the river. Further, the Comprehensive Shoreland Protection Act, RSA Ch. 483-B, may restrict the Taxpayer's ability to significantly improve the Property's view given the distance from the dwelling to the waterfront and the vegetation in between, as shown in the photographs in Taxpayer Exhibit 2. During cross-examination, the Town stated some adjustment to the assessment is warranted for the dwelling's location and the lack of river view. The Town suggested the assessment be adjusted by reducing the neighborhood condition factor from

150 to 125. The board finds the general real estate market would make a distinction for the restricted view due to the distance between the dwelling and the shoreline and applying the Town's suggested condition factor of 125 is reasonable and consistent with the methodology used to assess the other properties on Owl Lane.

Making this adjustment lowers the land value to \$108,000 and the total assessed value to \$230,500 and the board grants an abatement to that value for 6 Owl Lane.

If the taxes have been paid, the amount paid on the assessments in excess of \$142,600 on 4 Owl Lane and \$230,500 on 6 Owl Lane 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 assessments 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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John J. Ratigan, Esq., Donahue, Tucker & Ciandella, 225 Water Street, Exeter, New Hampshire 03833, counsel for the Taxpayers; Richard H. Cote, 6 Owl Lane, Lee, New Hampshire 03824, Taxpayer; Gary Roberge and Loren Martin, Avitar Associates, 150 Suncook Valley Highway, Chichester, New Hampshire 03258, representative for the Town; and Chairman, Board of Selectmen, 7 Mast Road, Lee, New Hampshire 03824.

Date: October 20, 2005

Anne M. Stelmach, Clerk