

**Karen S. & Eric S. Werner, Jr.**

**v.**

**Town of Holderness**

**Docket No.: 20414-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$1,129,000 (land \$1,125,700; buildings \$3,300) on Map 241, Lot 008, a 1.51 acre waterfront lot with improvements (the “Property”). For the reasons stated below, the appeal for abatement is granted to the Town’s revised assessment of \$1,127,300.

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. Other than correcting the acreage on the assessment-record card submitted by the Town subsequent to the hearing, the Taxpayers failed to carry their burden.

The Taxpayers argued the assessment was excessive because:

- (1) the Town assessed the Property based on an incorrect land size; the actual size is 1.51 acres;
- (2) a “Jacobs Appraisal” estimated the market value at \$995,000 as of September 16, 2002;
- (3) a “Moulton Appraisal” estimated the market value at \$920,000 as of November 19, 2003;
- (4) the assessment is disproportionate when compared to two abutting properties; and
- (5) the market value as of April 2003 is \$920,000 which, based on the equalization ratio of 97%, indicates a proper assessed value of \$892,400.

The Town argued the assessment was proper because:

- (1) a correction was made for the area in 2004 and should also apply to 2003 (the numbers would be different, however, because of a 2004 update);
- (2) a summary appraisal report prepared by Corcoran Consulting Associates, Inc. (“Corcoran Appraisal”) estimated the Property’s market value to be \$1,178,100 as of April 1, 2003;
- (3) despite utilizing comparables from Lake Winnepesaukee, if the sales in the Jacobs Appraisal are time adjusted at 1.25% per month rather than the .25 % per month rate employed, the results would indicate a value within 4% of the Town’s assessment; and
- (4) two Squam Lake comparables in the Moulton Appraisal are located in Dog Cove in Moultonborough, an inferior and more congested area than the Property.

The board kept the record open for the Town to submit a revised 2003 assessment-record card correcting the acreage to 1.51 acres. On September 20, 2006 the Town filed a revised assessment-record card adjusting the assessment to \$1,127,300 reflecting the corrected acreage.

**Board's Rulings**

On September 27, 2006, the board took a view of the Property, the Squam Lake comparables submitted in the Taxpayers' Moulton Appraisal and comparables 1 and 2 in the Corcoran Appraisal.

Based on the evidence, the board finds the proper assessment to be \$1,127,300 (land \$1,124,300; buildings \$3,300) based on the Town's revised assessment-record card. For the following reasons, the board finds no further abatement is justified.

The board finds neither the Jacobs Appraisal nor the Moulton Appraisal are conclusive evidence of the Property's market value. The Jacobs Appraisal utilized sales on Lake Winnepesaukee. While it is conceivable that certain sales on Lake Winnepesaukee could be reasonable comparables for a Squam Lake property, the board is unable to determine whether the value conclusion is sound because of the Jacobs Appraisal's lack of any supporting documentation, descriptions of the comparables, or any notes or comments as to the basis for the various adjustments. Also, the board finds the Town's evidence of market condition appreciation of 15% per year is supported and consistent with the board's knowledge and experience of market conditions in the 2001 through 2003 time period. The Jacobs Appraisal's use of 3% per year was neither documented nor reasonable based on the active real estate market during this time period, particularly in the Lakes Region.

Similarly, the Moulton Appraisal contains minimal discussion of its adjustments and at times appears to have applied inconsistent adjustments for location (see comparables 1 and 2 which are in the same general Dog Cove neighborhood). The board did view those comparables as identified by the Town during the hearing (Municipality Exhibit B, lots 28 and 30) and concludes, as the Town argued, that they are both inferior in location and views. Also, the board

noted on its view the Taxpayers' 345 feet of water-frontage provided for a pleasant dock and beach area with breakwater and additional undeveloped water-frontage for privacy.

The board finds the Corcoran Appraisal market value conclusion to be more reflective of the Property's market value than either the Jacobs Appraisal or Moulton Appraisal. While the Town's comparables 1 and 2 were in generally superior locations that provide more privacy and slightly more expansive views, the Town recognized those features by adjusting those comparables in a negative fashion by 10%. With that adjustment, the board finds the Corcoran Appraisal comparables are more similar to the desirability of the Property than the Moulton Appraisal's Dog Cove comparables which the Town testified were generally in a 40% inferior location.

The balance of the Taxpayers' arguments, including their discussion of the assessment error in the Town's June 2002 tax bill, are of no merit relative to proving disproportionality for tax year 2003.

If the taxes have been paid, the amount paid on the value in excess of \$1,127,300 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

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Karen S. & Eric S. Werner, Jr., 18 Taconic Drive, Amherst, NH 03031, Taxpayers; and Town of Holderness, Chairman, Board of Selectmen, PO Box 203, Holderness, NH 03245.

Date: October 4, 2006

---

Anne M. Stelmach, Clerk