

**Cotton Mountain Cottages LLC**

**v.**

**Town of Holderness**

**Docket Nos.: 20250-03PT and 21241-04PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 and 2004 assessments on Map 236, Lot 085 and Lot 030, which are two contiguous lots separated by Route 113 (the “Property”). Lot 085 is a 0.174 acre lot with 480 linear feet of frontage and seven boat docks on Squam Lake; Lot 030 is a 2.157 acre lot with a residence, rental cottages, a mobile home, garages and a gazebo. The total assessment of the Property was \$702,400 for tax year 2003 and \$790,000 for tax year 2004. For the reasons stated below, the appeals for abatement are denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) an appraisal (Taxpayer Exhibit No. 1) by a licensed appraiser (Valerie A. Kimball) estimates the market value of the Property as of October 11, 2002 at \$580,000;
- (2) the Property was purchased in an “arm’s-length transaction” (from relatives of the Taxpayer’s representatives) on August 4, 2003 for \$600,000 (see Taxpayer Exhibit 2) after “intensive and extensive” price negotiations;
- (3) the transfer tax was paid on the market value of \$600,000 and the State did not question this value;
- (4) the Town’s analysis to support the assessment contains errors that diminish its validity in comparison to the Kimball appraisal (“Appraisal”);
- (5) the Property is bisected by Route 113 which lowers its value considerably, as reflected in the Appraisal, as does the condition of the waterfront, which is only partly usable (see Taxpayer Exhibit 4);
- (6) for tax year 2004, the increase in the Town’s assessment (approximately 12 percent) is unjustified because the overall rate of appreciation was only about six percent;
- (7) the Town’s characterization of its comparable 3 as being on a “brook” is incorrect since the dwelling is on Squam Lake and has a dock located adjacent to it (and only the boathouse is situated on a brook inlet to the lake); and
- (8) visible power lines make the view of the lake from the Property less desirable than the comparables used by the Town.

The Town argued the assessments were proper because:

- (1) a property-specific analysis (“Report,” Municipality Exhibit No. B) estimates the market value of the Property at \$761,200 as of April 1, 2003, well above its assessment in that year, and

this analysis also supports the assessment in tax year 2004 when the rate of appreciation (15% to 18% per year) is taken into account;

(2) a revaluation was performed in 2003, which included a manual (Municipality Exhibit No. C) to document and support land and waterfront assessed values, and the Town also updated values in 2004;

(3) the comparable sales include waterfront properties bisected by roads and nearby properties and adequate location and other adjustments were made;

(4) the Appraisal relied upon by the Taxpayer substantially underestimates the value of the Property because there are differences between Squam Lake and Lake Winnepesaukee and because the very large percentage adjustment (48%) to account for a property bisected by a road on Squam Lake is not justified;

(5) the Taxpayer's appraiser (Kimball) was not present at the hearing to present her analysis and defend her appraisal and does not have as much experience with Squam Lake properties, in comparison to appraiser Armstrong (hired by the Taxpayer's relatives who sold their interest in the Property) who estimated a higher (\$700,000) market value that supports the assessment;

(6) the Town was aware of the 2003 sale, but did not use it because the sale was not exposed to the open market and treated the sale as 'non-qualified' (in reporting to the Department of Revenue Administration for equalized valuation purposes) because of the family relationship;

(7) shallow water and a sandy beach are amenities which add value to the Property, along with its location on Squam Lake, multiple docks and other amenities; and

(8) the Taxpayer failed to meet its burden of proof.

The parties agreed that the level of assessment was approximately 97% in each tax year under appeal.

### **Board's Rulings**

For the reasons that follow, the board finds the Taxpayer failed to carry the burden to show that the Town's assessments were disproportionate.

Three general areas of market evidence were submitted by the parties:

- 1) the August 4, 2003 sale of the Property for \$600,000;
- 2) the Appraisal estimate of market value as of October 11, 2002 of \$580,000; and
- 3) the Report estimate of market value as of April 1, 2003 of \$761,200.

The board will address each one of these general areas in order.

#### August 4, 2003 Transfer

The Taxpayer argued the sale of the Property for \$600,000 was an arm's-length transaction, even though it occurred between family members, because of the extensive negotiations over price and the lack of any undue motivation for the transaction to occur. The board finds that, while the sale may include some aspects of a market value transaction, it falls short of meeting the requisite criteria of being exposed competitively in an open market between disinterested parties to qualify as an arm's-length transaction and to be the basis for a market value assessment. See, e.g., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 255-256 (1994) (tribunal should consider "numerous factors," including whether the transaction is at arm's length and the relationship that existed between buyer and seller, in determining "whether sales price is an indication of fair market value").

In this case, two siblings (with their spouses) had owned the Property for a number of years and one sibling indicated a desire to sell his interest in 2002. This resulted in a negotiation between him and the other sibling's family (represented by his nephew) to relinquish his half-interest, and, ultimately, a transfer of the Property for \$600,000 in August 2003.

While the negotiations included two appraisals and at least one offer and counteroffer, the transfer did not satisfy the accepted definitions of market value and an arm's-length transaction contained in The Appraisal Institute, The Appraisal of Real Estate (12<sup>th</sup> ed., 2001):

**Market Value:** “The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeable, and for self-interest, and assuming that neither is under undue duress.” (Emphasis added.) Id. at 22.

**Arm's-Length Transaction:** “A transaction between unrelated parties under no duress.” (Emphasis added.) Id. at 150.

See also Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988) (“An arm's length transaction is '[a] transaction freely arrived at in the open market, unaffected by abnormal pressure or by the absence of normal competitive negotiation as might be true in the case of a transaction between related parties' [quoting from a standard text on “Real Estate Appraisal Terminology”]”).

However ‘intense or extensive’ the communications between the uncle and nephew may have been, there is no indication the Property was exposed to an open, competitive market at all (such as, for example, by listing it with a broker) and the parties were clearly related to each other. The testimony further reflected the uncle had obtained his own appraisal (from an appraiser having more experience with Squam Lake properties) estimating the value of the Property “in the \$700,000 range,” well above the transfer price.<sup>1</sup>

Thus, the board finds the \$600,000 transfer price to be an unreliable indication of the Property's market value.

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<sup>1</sup> The board further notes that if, as a reasonableness exercise, the midpoint between the two appraisals (\$640,000) is used and an acceptable appreciation factor (1 percent per month from October, 2002 which the board finds is supported by the evidence) is applied, then the estimated value at the time of transfer in August, 2003 is approximately \$700,000, substantially above the \$600,000 transfer price and supportive of the assessment.

Kimball Appraisal

The Taxpayer argues the Appraisal is additional evidence of market value that supports an abatement. Extensive testimony was presented by both sides relative to the Appraisal, but critically lacking was the presence of Ms. Kimball to testify as to the basis of a number of her adjustments in the sales comparison grid that are not explained in the Appraisal. While the board understands the necessity to make significant adjustments given the lack of comparable sales at that time of Squam Lake properties that are split by a road, the board has concerns as to the magnitude of the adjustments, especially when many of them are not adequately explained or documented.

The major adjustment made in the Appraisal is “48% for Rd [road]” which does have some documentation and a paired sales analysis attached to the Appraisal. However, little information about the comparable properties in the paired sales analysis is available other than some assessment-record cards and some general property descriptions in the adjustment grid. Consequently, it is difficult for the board to determine whether the properties analyzed are similar in nature and whether the markets in which they exist are similar to that associated with the Property.

The Appraisal contains several other adjustments that are not discussed or documented which, if reasonably revised, result in the market value conclusion being closer to \$700,000 than \$600,000. First, the Appraisal makes an adjustment for “site” in comparing the comparable sales to the Property, which is noted in the Appraisal as containing approximately two acres and 446 feet of shoreline. All three comparables have less acreage and water frontage and yet the adjustments vary from a positive \$100,000 for comparables one and three, to a negative \$125,000 for comparable two. These varying large adjustments are not explained or documented

in the Appraisal and on their face appear to be inconsistent (although they may relate to the notation, with no details or explanation, of the quality of the sites such as average or good, or average/good).

Second, the Appraisal makes some adjustments for docks but it appears to be minimal, particularly for comparables two and three. Again without any discussion of the adjustment, comparing the Property's seven docks with the comparables that presumably have only a single dock for their single dwelling and adjusting only \$10,000 for the difference of six docks appears to be nominal and not reflective of what the market would recognize. The ability to have seven docks on the waterfront, either because they are grandfathered or permitted pursuant to RSA ch. 482-A, is a significant property right compared to the ability to have only one dock.

Third, the Property contains five units plus a finished area over one of the garages that are rented out or used by family members. The Appraisal adjusted for the presence of four cottages in addition to the main dwelling on a basis of \$10 per square foot for the unheated seasonal cottage and the mobile home and \$20 per square foot for the heated cottages. Their total contributory value of \$47,000 estimated in the Appraisal is again very minimal relative to their contributory value as shown by their values contained in the Town's assessment-record cards and the Report, and based on the board's general experience. These additional units, each with an associated dock, while perhaps limiting the market for such property, are significant real estate rights that would be attractive to an individual looking for a family compound or for rental income to offset the ownership costs of such a property.

The adjustments noted in the previous paragraph to the Appraisal are easily enough to raise the Appraisal's indicated value to be more in line with the Town's assessment even if the

road adjustments are accepted as presented. Consequently, the board concludes the Appraisal is not conclusive or reliable evidence of the Property's market value for either tax years under appeal.

### The Report

The Taxpayer asserted the value conclusion of the Report was not reliable because it contained a number of errors and questionable assumptions. The board has reviewed the Report and considered the Taxpayer's testimony, but finds that none of the errors or questioned assumptions are either fatal or so incorrect to materially undermine the Town's assessed values. For instance, significant testimony was presented as to the view from the Property, with the Town asserting it was superior to that of the comparables submitted in the Report and the Taxpayer asserting it was not. The board has reviewed the photographs submitted and generally agrees with the Taxpayer that the views, while different, are not of such difference in magnitude to warrant any adjustment. The board notes, however, that the Town in its Report made no adjustments for any difference in views.

The Taxpayer argued the Town's waterfront adjustment of \$350 per foot treats all of the frontage the same when some of it has less utility than others. While indeed that is true, the board finds the Town's adjusted value of \$350 per front foot is significantly less than that contained in the Holderness 2003 Project Report ("assessment manual," Municipality Exhibit No. C) which documented a number of waterfront sales and the average waterfront value extracted from such sales. The board notes also, based on the photographs, that while some of the frontage may not have high utility due to its lack of depth, it does provide privacy and protection of the view afforded from the developed parcel on the other side of Route 113.

A number of the comparables submitted, have less frontage, less privacy and at times the waterfront lot is significantly narrower than the developed property on the opposite side of the road. The board also finds that the Report's adjustment for the cottages and docks, while different from their values on the assessment-record cards, is more reflective of the contributory value than that contained in the Appraisal. Consequently, the board finds the Town's market value conclusion in the Report is not unreasonable and is generally supported by market data in the Report and in the assessment manual.

In summary, the board finds the Property has many positive attributes that contribute significantly to its value. The combined area of both lots is in excess of two acres and contains 480 feet of frontage on Squam Lake. The frontage is able to accommodate seven docks for the multiple dwelling units on the opposite side of the road. The roadside parcel contains the main dwelling and four rental units with substantial garage space. The Property has a pleasant view of Squam Lake, albeit interrupted by utility wires along Route 113. The board finds that all of these positive attributes result in a value that is higher than the two sales contained in the Report (that have a similar road division of the property) and indicates a value more similar to the Town's assessed value than that argued and requested by the Taxpayer.

Neither party developed a separate estimate of the market value of the Property for tax year 2004, the second year under appeal. The board finds, however, that applying a reasonable time adjustment (1 percent per month) to the April 1, 2003 estimate contained in the Report amply supports the Town's assessment for tax year 2004 as well.

For all of these reasons, the appeals are denied.

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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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Paul Tremblay, 9650 So. Ocean Drive - #104, Jensen Beach, FL 34957, representative for the Taxpayer; and Town of Holderness, Chairman, Board of Selectmen, PO Box 203, Holderness, NH 03245.

Date: September 22, 2006

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Anne M. Stelmach, Clerk