

**Steven and Penny Binette**

**v.**

**Town of Milan**

**Docket No.: 22023-05PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of \$373,900 (land \$139,100; building \$234,800) on Map 195/Lot 73, a single-family waterfront home on 0.58 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted to the assessment recommended by the Town.

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. We find the Taxpayers failed to prove disproportionality beyond the amount of the Town’s revised assessment.

The Taxpayers argued the assessment was excessive because:

(1) the Property is located on Nay Pond, one of two ponds in the Town, and this pond is less desirable because of differences in the access roads (private and gravel versus public and paved), water quality and depth, and other factors compared to Cedar Pond, but the Town uses the same land base rates for both ponds;

(2) the Property's topography is steep (35 foot drop-off to water from road with lot depth of only 160 feet);

(3) an analysis of the Town's sales indicates some discrepancies, including one lot (Roberts) which sold for \$97,000 but has 1.67 acres listed on the deed, not the 1.0 acre shown on the Town records;

(4) the Taxpayers' expert (Robert Goddard, a state licensed residential appraiser) estimated the market value of the land to be \$93,000 as of the assessment date (April 1, 2005) after inspecting the Property and looking at comparable sales and assessments, including the "Glenney" property (Comparable #2 on Municipality Exhibit No. B), also on Nay Pond;

(5) the Town based its assessments on only two vacant waterfront land sales and two improved waterfront sales within a two year period (10/1/03 – 10/1/05) for the Town's tax year 2005 update of values, which is "precious limited data," and the Town should have expanded its sales analysis to look at waterfront properties in neighboring municipalities;

(6) according to Mr. Goddard, the dwelling has an estimated value of \$207,000 using the "Marshall & Swift" cost service valuation data; and

(7) the Property should be valued and assessed at no more than \$300,000 according to Mr. Goddard.

The Town argued the assessment, as adjusted below, is proper because:

- (1) a Town-wide reassessment (full update) was performed for tax year 2005;
- (2) the Town developed waterfront land value tables for each pond and the riverfront and applied these values consistently;
- (3) the Town adjusted the Property's land value by minus 20% for the lot's steep topography and has now applied a revised condition factor of 140 for the waterfront (not the 160 shown on the tax year 2005 assessment-record card), which results in a revised land assessment, approved by the Town's selectmen, of \$125,500 (from \$139,100);
- (4) the six comparable waterfront lots shown on Municipality Exhibit No. B support the land assessment of the Property;
- (5) the Town adjusted for the differences in the access roads noted by the Taxpayers, including, for example, assigning to other properties a higher neighborhood factor (plus 10%) for public (Town-maintained) roads on Cedar Pond;
- (6) the "Glenney" property (Comparable #2 on Municipality Exhibit No. B) is a more desirable lot and is assessed accordingly (\$151,000 land value versus \$125,500 for the Property);
- (7) the Town adjusted the dwelling's price per square foot after reviewing the Taxpayers' building plans and considering the quality of construction and believes the building assessment is proportional compared to other properties; and
- (8) except as adjusted above, a total assessment of \$360,300 (land \$125,500; building \$234,800), no further abatement can be supported by the evidence presented by the Taxpayers.

The parties stipulated the level of assessment was 101.7% in tax year 2005, as determined by the median ratio calculated by the department of revenue administration.

**Board's Rulings**

Assessments must be based on market value. RSA 75:1. The Taxpayers, through their expert witness, Mr. Robert Goddard, attempted to submit an appraisal performed by Mr. Goddard in support of their appeal. The Town, however, objected to the admission of the Taxpayers' appraisal because the Town only received a copy of the appraisal on the morning of the hearing. Pursuant to the board's rules, in particular Tax 201.35, any appraisal or statistical report prepared by a party for the hearing must be exchanged and given to the opposing party at least 14 days prior to the hearing. Mr. Goddard testified he became involved in the case late in the process because he was out of the country on an extended vacation. While the board noted Mr. Goddard's late involvement, the board excluded his appraisal because it was untimely under the board's rules.

The majority of the Taxpayers' market related support for their position was based on Mr. Goddard's appraisal which the board did not allow into evidence. Mr. Goddard estimated the value of the improvements using the "Marshall and Swift" nationally recognized building cost service. The supporting data for his estimate, however, was presumably contained in his appraisal which was not allowed into evidence. Similarly, his market value evidence for the Property was, presumably, contained in the same appraisal. Without any timely submitted supporting data, the board can give little weight to Mr. Goddard's values.

The board also notes both parties attempted to submit more than ten comparable sales as part of their evidence. The board's rules on this issue, specifically Tax 201.33(g), allow for more than ten comparable sales only after the submitting party has received leave of the board to submit additional comparables. In this case, neither party requested leave of the board and the board limited the parties to a selection of their ten best comparable sales.

The Taxpayers, through Mr. Goddard, questioned and attempted to discredit the Town's methodology. The supreme court has held that even if a taxpayer could somehow demonstrate the municipality could arguably have used a different methodology, or that its methodology is flawed in some way, "the flawed methodology does not, in and of itself, prove the disproportionate result." Porter v. Town of Sanbornton, 150 N.H. 363, 369 (2003). In other words, as also noted in Porter, *id.* at 368, in order "[t]o carry the burden of proving disproportionality, the taxpayer must establish that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985)."

The Taxpayers also questioned the accuracy of the Town's assessment due to the limited number of real estate transfers that occurred in the Town from which to determine reliable base land values and adjustments for the waterfront properties. The Town, however, performed a full update for tax year 2005 which included, using previous physical property measurements, a complete review of all sale transactions and a recalibration of all assessment tables and models. The Town testified the base rate of \$32,000 for a typical, nonwaterfront, one acre lot within the Town, without any other influencing factors, was supported by the sales the Town compiled. The Town acknowledged the fact there were a limited number of qualified sales from which to establish the impact of waterfront influencing factors on the value of properties. The Town testified there were a total of six waterfront sales including sales on Nay Pond, Cedar Pond and the Androscoggin River. The effect of the waterfront influence on the value of the waterfront properties was determined using the sales on the three bodies of water.

The Town testified two sales in particular supported the adjustments made to the Property. Specifically, the January 3, 2005 Chung to Roberts' sale for \$96,000, of an

undeveloped lot supports the Property's land assessment of \$92,000. Further, the August 17, 2005 sale of Map 95/Lot 29 for \$110,000 also supports the waterfront influence factors determined by the Town. The latter sale included a rustic camp which the Town testified was about to "fall into the ground." The owners of that property told the Town they basically considered the transaction a land sale as the building was in very poor condition.

The board reviewed the Town's methodology and finds, although there was a limited number of sales and both parties acknowledged a larger number of sales would have produced a more statistically sound result, the Town determined the values and influence factors reasonably using the limited amount of market data it had available. The board finds the Town explained the derivation of the base lot value as well as the estimation of the water influencing factor values and applied a consistent methodology in determining the Property's assessment. The Town testified the Property's assessment was arrived at using the same consistent methodology used in assessing other properties in the Town. This is some evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Upon review, the Town acknowledged the land assessment should be adjusted further by revising the waterfront condition factor to reflect the Property's 175 feet of waterfrontage rather than the 200 feet previously listed. The Town's contracted assessor revised the land condition factor from 160 to 140 which lowered the land value and took the revised value estimate to the Milan Board of Selectmen's meeting on the night before the hearing. At the meeting, the

selectmen determined the assessor's revised assessment was more accurate and voted to accept the revised value and assign it to the Property for tax year 2005. Upon review, the board finds this adjustment is proper and the Town's revised assessment of \$360,300 should apply for 2005.

For the previously discussed reasons, the appeal is granted to the Town's revised assessment of \$360,300 (land \$125,500; building \$234,800).

If the taxes have been paid, the amount paid on the value in excess of \$360,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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.

Steven and Penny Binette v. Town of Milan

Docket No.: 22023-05PT

Page 8 of 8

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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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: Steven and Penny Binette, 181 Overlook Road, Milan, NH 03588, Taxpayers; David S. Woodward, Avitar Associates of New England, Inc., PO Box 307, Milan, NH 03588, contracted assessing firm for the Town; and Chairman, Board of Selectmen, Town of Milan, PO Box 300, Milan, NH 03588-0300.

Date: April 24, 2008

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Anne M. Stelmach, Clerk