

**Jerald and Deborah Burwick**

**v.**

**Town of Madison**

**Docket No.: 23387-07PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$267,200 (land \$195,200; building \$72,000) on Map 109/Lot 110, 3 Little Shore Drive, a single family home on 0.42 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property is in the “Eidelweiss” residential development and there has been a systematic overassessment of Eidelweiss properties by the Town as shown in the attachments to the appeal document;

(2) the Town has a separate tax levy on Eidelweiss homes which results in a total tax rate that is 30% higher than other properties in the Town and the taxes levied on the Property have gone up significantly since 2002, as shown in Taxpayer Exhibit No. 1;

(3) the house on the Property is small and is an older structure on the “Little Lake” (Little Pea Porridge Pond), not the larger “Middle Lake” (Middle Pea Porridge Pond), and values are lower on Little Lake where only canoes and row boats can be used; and

(4) the market value of the Property as of the assessment date is no more than \$180,000, based on its size and the average value of waterfront houses per square foot shown in Taxpayer Exhibit No. 2, and the Property is entitled to a substantial abatement.

At hearing the Town recommended a revision to the assessment to recognize the crawl space basement area for the house, reducing the assessed value to \$264,600. The Town argued their revised assessment was proper because:

(1) increases from prior taxes paid are not reflective of whether a property is overassessed;

(2) the Town looks at selling prices, not asking prices, when assessing properties because they are more reliable indicators of market value;

(3) there is a nice beach area to the south of the Property and the lack of power boating on Little Lake can be an attractive amenity compared to other lakefront properties;

(4) there are topography issues which affect the values of other properties further up Little Shore Drive compared to the Property which has a gently sloping beach rather than steep and rocky beach fronts;

(5) there were a number of sales of waterfront properties in the vicinity that sold for more than their assessed values, refuting the Taxpayers’ contention that Eidelweiss properties were systematically overassessed; and

(6) the Taxpayers failed to show the Property was disproportionately assessed.

The Town stated the level of assessment was 96.1% in tax year 2007, the median ratio computed by the department of revenue administration (the “DRA”), and the Taxpayers did not dispute this statement.

### **Board’s Rulings**

Based on the evidence, the board finds the market value of the Property as of April 1, 2007 was \$225,000 and results in an assessed value of \$216,200 (rounded) by applying the 2007 median ratio of 96.1% ( $\$225,000 \times .961$ ).

Based on the review of all the market data submitted, the board is unable to agree with the Taxpayers’ assertion the Property had a market value of \$180,000 in 2007. The Taxpayers’ \$180,000 estimate appears to be influenced to some extent by the differential between the asking prices of several properties and the assessed values as shown on the spreadsheet attached to the Taxpayers’ appeal document. While such comparison is a practical starting point to test the reasonableness of the assessment, further analysis of actual sales of comparable properties must be done to estimate the Property’s market value and determine a proportionate assessment.

On the other hand, however, the board finds a review of all the sales data submitted by the parties, when adjusted for differences, supports a lower assessment. The Town submitted several sales of properties on Little Pea Porridge Pond and sales on Middle Pea Porridge Pond and Silver Lake. While there was some testimony as to whether, in general, sales of properties on larger water bodies tend to indicate a higher market value, the board need not rule here on that issue and the Town’s assessment land models not having any differential in the land based rates between the three Pea Porridge Pond water bodies based on their size. Rather, sufficient sales exist of properties that have sold on Little Pea Porridge Pond. In particular, the sales of

4 Little Loop Road and 21 Little Shore Drive are reasonably similar to the Property to provide good benchmarks for estimating the Property's market value and, indeed, are the best comparables of all those submitted for doing so.

The 4 Little Loop Road property, which is directly across the lower portion of Little Pea Porridge Pond from the Property, sold in August of 2008 for \$235,000. The Town argued this sale was 16 months after the 2007 assessment date of April 1 and thus should be disregarded as the market was more sluggish at that time than in April 1, 2007. We disagree as the Town's assertion does not square with the evidence in the record of the market change in Madison from 2007 to 2008. Based on the DRA's determination of the 2007 median ratio of 96.1% and the 2008 median ratio of 95.8%, the board concludes the market was essentially level during that time period and thus the fact the sale occurred 16 months after the assessment date is not a significant factor to account for.

The 4 Little Loop Road property is located directly opposite the Property on the southern arm of Little Pea Porridge Pond and is situated on a slightly smaller lot. The Town testified the shore frontage of the southern arm of Little Pea Porridge Pond has nearly level topography while the northern arm is generally steep to the shore. Consequently, the board found there was no evidence submitted to make any significant adjustment for the location of the lot. While the lot size of 4 Little Loop Road is approximately half that of the Property, given the small lot sizes that exist in general on Little Pea Porridge Pond, the size differential results in a negligible value difference as both lots can adequately support a recreational dwelling. The 4 Little Loop Road property consists of a similar style house as the Taxpayers but is a raised chalet type with the basement finished, nearly doubling the amount of finished square footage compared to the Property. This factor causes the sale to be superior to the Property and, therefore, the sale price of \$235,000 brackets the Property's market value on the high side.

The 21 Little Shore Drive property sold in May 2007 for \$215,000, the asking price for the property. This property has significantly more finished space both in the basement and first floor area combined than the Property, which makes it superior and needs to be accounted for. However, as noted on the assessment-record card reflecting the Town's abatement given to 21 Little Shore Drive, the dwelling is located so that there is minimal or no view of Little Pea Porridge Pond and in this northern portion of Little Pea Porridge Pond, there is steep access to the waterfront. This contrasts with the parties' description that the Property is essentially at level grade with Little Pea Porridge Pond and has a good view of the pond. Because Eidelweiss properties are purchased primarily for enjoyment as recreational waterfront properties, the ease of access to, and view of, the water are significant factors the market participants would recognize and, in this case, likely more than offset the larger living area square footage of the 21 Little Shore Drive sale compared to the Property. Consequently, we conclude the sale of 21 Little Shore Drive brackets the market value of the Property on its low side.

The board reviewed and considered the two comparable sales just north of the Property that sold for \$379,000 and \$385,000 in 2005 and 2007 from which the site value models were extracted by the Town's assessing contractor at the time of the 2007 reassessment. However, these sales contain significantly superior improvements in age, quality of construction and square footage of living area. While certainly performing a land residual extraction from these sales is a reasonable process to attempt to isolate a land or site value, the indicated results of the extraction process must be weighed carefully with other market evidence due to the inherent reduced reliability of the residual indications when improvements of significant value are involved. Consequently, the board gives less weight to the extracted site value that was applied to the Property during the assessment process and more weight to the direct sales comparison results of

the sales of 4 Little Loop Road and 21 Little Shore Drive which are more similar to the Property.<sup>1</sup>

The Taxpayers also argued the amount of taxes they must pay had increased significantly. The amount of property taxes paid by the Taxpayers was determined by two factors: (1) the Property's assessment; and (2) the municipality's budget. See, generally, International Association of Assessing Officers, Property Assessment Valuation, pp. 4-6 (1977). The board's jurisdiction is limited to the first factor, i.e., the board decides if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Bretton Woods Co. v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and authority limited by statute).

The increase in taxes could also have been impacted by the fact the Property is located in a development known as Eidelweiss which has been structured as a separate village district with the ability to have its own tax rate to meet the costs of the district (roads, water system, beaches, etc.) The Taxpayers asserted the district's higher overall tax rate negatively impacts the market value of properties within Eidelweiss. Certainly the level of taxation is a factor considered by participants in the market and is many times reflected in the ultimate sale price paid for a property. However, to the extent that the Eidelweiss district tax rate negatively impacts market

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<sup>1</sup> As a specialized tribunal, the board has de novo appellate authority to review all the evidence submitted. To determine whether an abatement is warranted, the board considers and weighs the market value evidence presented, utilizing its "experience, technical competence and specialized knowledge." See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it.") Further, in making its findings where there is conflicting evidence, the board must determine for itself the credibility of the witnesses and the weight to be given the testimony of each because "judgment is the touchstone." See, e.g., Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

value, the use and analysis of sales within Eidelweiss inherently reflect any such negative market recognition. Thus, no separate adjustments of sales within Eidelweiss are necessary.

Consequently, after considering all the market evidence and, in particular, the two sales at 4 Little Loop Road and 21 Little Shore Drive, the board estimates the Property's 2007 market value was \$225,000. Applying the 2007 ratio of 96.1% results in the proportionate assessment of \$216,200 for 2007.

If the taxes have been paid, the amount paid on the value in excess of \$216,200 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(g). 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: Jerald and Deborah Burwick, 165 Tremont Street - Unit 601, Boston, MA 02111, Taxpayers; Chairman, Board of Selectmen, Town of Madison, PO Box 248, Madison, NH 03849; and David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: July 16, 2009

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Melanie J. Ekstrom, Deputy Clerk