

**Bruce P. Melton**

**v.**

**Town of Deering**

**Docket No.: 24188-08PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$360,600 (land \$223,100; building \$137,500) on Map 235/Lot 23, a single family home on 1.60 acres on Deering Reservoir (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the proximity of the Property to the Town’s public beach and boat launch prevents the Taxpayer from full enjoyment of the Property;

- (2) there are no restrictions regarding when the beach or boat launch are available for use;
- (3) the beach is not patrolled or monitored by the Town's police department after ten o'clock at night;
- (4) after the police end their patrols, there are frequent users of the beach who are noisy;
- (5) the noise of the trucks loading and unloading boats at the boat launch is a nuisance;
- (6) the Property does not have a well nor does it have a heating system adequate to provide heat during the winter months and, therefore, the dwelling should not be considered a year-round home; and
- (7) the assessment should be abated to \$300,000.

The Town argued the assessment was proper because:

- (1) when it was calculated, adjustments were made to account for the concerns and issues raised by the Taxpayer;
- (2) the lack of a well is not uncommon for seasonal waterfront properties; and
- (3) the Town's analysis (Municipality Exhibit B) indicates no abatement is warranted.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$317,700.

The Taxpayer argued an abatement was warranted for two primary reasons. First, the Property's proximity to the public beach and boat launch causes the Taxpayer to be unable to fully enjoy the Property. Second, the Property's lack of a well to provide a potable water supply and the lack of an adequate heating system combine to preclude the Property from being occupied on a year-round basis.

Regarding the first reason, the Taxpayer asserted the beach is on state owned land but controlled by the Town through an arrangement with the state. The Taxpayer contends the lack

of any enforceable restrictions or guidelines regarding the use of the beach and boat launch areas coupled with the fact the Property's topography is shaped so that it acts like an amphitheater combine to regularly funnel an unpleasant level of noise to the Taxpayer and his family at the dwelling. The board finds the Town's adjustment of 25% for economic obsolescence for the presence and proximity of the public beach and boat launch should be applied to the entire Property, rather than just the land as the Town has done, because the entire Property is impacted by these conditions. Economic or "[e]xternal obsolescence is a loss in value caused by factors outside a property. It is often incurable." Appraisal Institute, The Appraisal of Real Estate, 442 13<sup>th</sup> ed. (2008). Also, "[e]xternal factors frequently affect both the land and building components of a property's value." Id. Further, "external obsolescence may affect only one property when its cause is location-e.g., proximity to negative environmental factors or the absence of zoning or land use controls." Id. at p. 443. The Town questioned the level of noise actually reaching the Property and submitted two photographs (in Municipality Exhibit B) which showed the vegetation between the house and the beach area and testified these trees act as a buffer and screen the Property, therefore, mitigating some of the noise. The board finds the Town's argument unavailing. It is inconsistent for the Town to apply the 25% economic obsolescence factor to the entire land area due to the noise from the beach and then to argue the noise does not reach and impact the dwelling on the land. Municipalities must consider all relevant factors in assessing property proportionally. Paras v. Portsmouth, 115 N.H. 63, 67-68 (1975). Therefore, the board has applied the economic obsolescence factor to the entire Property.

The second reason the Taxpayer believes an abatement is warranted is the fact the dwelling on the Property is assessed as a year-round home when in fact it can not be used during

the colder months. The Property does not have a well to provide a potable and consistent water supply but rather draws water from the lake. While this situation is not unique for seasonal dwellings where lake water is frequently used for bathing or toilet flushing, it is unreasonable to consider this water to be available and potable on a year-round basis for several reasons.

Frequently, lakes are drawn down to allow for beach and dock repairs and to provide room for any snow melt in the spring, especially if the winter snowfall is unusually heavy. Further, because the lake freezes and the supply line is most likely not at a depth to prevent freezing, this water supply would be undependable. In addition to the water supply issue, the Taxpayer testified the house is heated by some radiant electric heaters; however, the capacity of these heating elements is insufficient to adequately heat the dwelling during the colder months. This condition precludes the Property from being utilized for anything more than a three-season dwelling. The fact the Town has assessed the Property for year-round occupancy is inappropriate given these two value-influencing factors. The board finds an additional 5% functional depreciation should be added to the building assessment to reflect the fact there is no permanent water supply and has insufficient heat for winter occupation. These are factors that impact its market value and should be reflected in the assessment.

In support of the assessment, the Town submitted Municipality Exhibit B titled “comparable sales report for Bruce P. Melton” and contained an analysis comparing four properties which had sold to the Property. The board notes the four sales used appear to all be dwellings that could be used on a year-round basis. The board finds this analysis uses comparable sales which have a different highest and best use than the Property and is not compelling evidence of the Property’s market value and, therefore, not supportive of the assessment.

Combining all the previously discussed findings, when the cost new value for the dwelling of \$136,889 reflected on the assessment-record card is factored by the 5% normal depreciation, an additional 5% functional obsolescence for the lack of a well and insufficient heat and 25% economic obsolescence for the proximity to the beach and boat launch, the resulting total depreciation becomes 35% and the assessment on the building is \$89,000 (rounded). Similarly, the \$7,500 value for the extra features depicted on the assessment-record card must be adjusted by the same 25% economic obsolescence factor resulting in an adjusted value of \$5,600 (rounded). Combining these adjusted values with the \$223,100 value for the land yields a revised assessment of \$317,700.

If the taxes have been paid, the amount paid on the value in excess of \$317,700 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.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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

Bruce P. Melton v. Town of Deering

Docket No.: 24188-08PT

Page 6 of 6

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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Karyl R. Martin, Esq., Sheehan, Phinney, Bass + Green, P.A., 1000 Elm Street, Box 3701, Manchester, NH 03105-3701, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Deering, 762 Deering Center Road, Deering, NH 03244; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 11/10/10

---

Anne M. Stelmach, Clerk