

**Brian P. and Kathryn A. Butler**

**v.**

**Town of Belmont**

**Docket No.: 24609-08PT**

**DECISION**

The “Taxpayers”<sup>1</sup> appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$162,500 (land only) on Map 107/Lot 127, a 12,197 square foot vacant lot on a canal accessing Lake Winnisquam (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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 Taxpayer failed to prove disproportionality.

---

<sup>1</sup> The caption of this appeal was changed on the date of the hearing, without objection, to reflect the fact the Property is owned by a married couple. The appeal was originally filed in the name of the husband only (Brian P. Butler).

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased for \$95,000 in June, 2007 from Carol Butler, who had owned it since 1980, and she is the mother of Brian Butler, one of the Taxpayers;
- (2) in arriving at this figure, Mr. Butler relied on an opinion of value from a real estate broker, who indicated a range of \$98,000 to \$105,000 “would be a realistic price” (Taxpayer Exhibit No. 1);
- (3) the Taxpayers were motivated to obtain this opinion and pay a fair price because Mr. Butler has three older brothers who were affected by the fairness of the transaction with his mother;
- (4) the Property is an undeveloped piece of land with lake access and the comparables presented also have lake and beach access (with some being part of the same association) and support the purchase price paid; and
- (5) the assessment should be abated substantially based upon a market value of \$95,000.

The Town argued the assessment was proper because:

- (1) as indicated by the map submitted as Municipality Exhibit A, the Property is on a canal giving direct water access to Lake Winnepesaukee;
- (2) the comparables on Taxpayer Exhibit No. 2 are all inferior because, while some have either view of, or access to, water, none are directly on the water like the Property;
- (3) the Town performed a revaluation in 2007 and the Property’s assessment increased from \$99,900 to \$162,500 at that time, but this reflects a change in the level of assessment (from 66.6% in 2006), not an increase in the Property’s estimated market value;
- (4) the June, 2007 transfer of the Property is an “unqualified” sale; and
- (5) the Taxpayers did not meet their burden of proving disproportionality.

The parties agreed the level of assessment in tax year 2008 was 108.4%, the median ration calculated by the department of revenue administration (“DRA”).

### **Board’s Rulings**

Based on the evidence the board finds the Taxpayers did not carry their burden for a number of reasons.

First, the board gives no weight to the Taxpayers’ purchase of the Property in 2007 from the mother of one of the Taxpayers, Brian Butler, as the Property was not competitively exposed in the open market.

A standard definition of what constitutes market value, formulated by The Appraisal Institute in The Appraisal of Real Estate (12th ed., 2001), is as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Emphasis added).

See also Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H.

253, 255 (1994) (when utilizing sales as the basis for estimating market value, a number of factors must be considered in determining whether sales are indicative of market value,

“including whether the sale was an arm's length transaction, whether additional incentives were

offered, whether unusual duress existed against either the buyer or seller, and whether some relationship existed between the buyer and seller that would influence the sale price.”)

As noted above, for a sale to be an arm’s-length transaction, the property must be exposed to the open market for a reasonable time period and the sale should not be between related parties. Here, no realtor or public listing was involved in selling the Property. Rather, one of the seller’s sons, Brian Butler, obtained an opinion of value from a real estate broker (Taxpayer Exhibit No. 1) as the basis of determining the consideration price paid. While there is no reason to doubt Mr. Butler’s good faith in obtaining the broker’s opinion in an attempt to tie the consideration price to market value, the opinion does not appear to be a valid estimate of market value. Mr. Butler testified the broker, lacking sales of vacant lots in the neighborhood association where the Property is located, utilized improved sales and in some fashion deducted for the improvements to arrive at a residual land value. The broker was neither present to testify as to how the improvement value was determined nor was any documentary evidence submitted to show any supporting calculations.

Second, the broker’s opinion appears to be influenced by the misunderstanding that the 2006 assessed value of \$99,900 was current and at full market value. As noted earlier, the Town subsequently performed a reassessment in 2007 and it is clear the 2006 assessments were substantially below market value as indicated by the DRA’s 2006 median ratio of 66.6%. Applying the 2006 ratio to the Town’s prior assessment of \$99,900 results in an indication of the Property’s 2006 market value of \$150,000 (assessed value of \$99,900 divided by the median ratio of 0.666), quite close to the Town’s equalized market value of \$149,900, rounded, in 2008 (assessed value of \$162,500 divided by the median ratio of 1.084). In other words, the assessment increased, not because of any change by the Town to the Property’s estimated market

value, but only because of changes in the level of assessment (from 66.6% in 2006 to 108.4% in 2008).

Third, the improved sales utilized by the Town during the 2007 reassessment to establish the land value for waterfront properties (Municipality Exhibit B) indicate a significantly higher contributory value of the waterfront or land portion of the sale price than that suggested by the broker opinion. Those sales and the assessment-record cards of the adjoining developed lots to the Property, including Carol Butler's adjacent, improved property, indicates an improved lot value is in the range of \$197,000 to \$203,000 for lots with direct access to the canal and Lake Winnisquam. Comparing the assessment-record cards of improved and unimproved properties indicates the Town's assessment methodology applied a 25% factor to unimproved lots to recognize the value yet to be added by connecting sites to water and sewer and performing the typical site work necessary to support a dwelling. The board finds the Town's assessment methodology is reflective of normal market considerations of improved versus unimproved lots.

Fourth, utilizing the broker's opinion and the Taxpayers' purchase price of \$95,000 to \$100,000 for the lot value and subtracting it from the improved property sales of Municipality Exhibit B results in an indicated contributory value for the buildings that is far in excess of their replacement cost. This is another indication the sale price from a related party and the broker's opinion understates the true market value of the vacant lot.

Fifth, the Taxpayers' comparables across Sunset Drive (Map 107, Lots 166 and 167) do not have the same property rights because they do not have direct access on the canal. Location on the canal provides the Property direct access to Lake Winnisquam. While Lots 166 and 167 do have some lake access through the association's common lots to the waterfront, they do not

have the direct “walk-out” access as the Taxpayers’ Property does; thus, any comparison of assessed values is not meaningful as the property rights are significantly different.

Sixth, the board is unable to give any weight to the comparables contained in Taxpayer Exhibit No. 2 because, as the Town noted, they are of properties in different municipalities and do not have direct frontage on lakes, but only water view of right-of-way access to waterfront.

For all the reasons noted above, the board finds the Taxpayers failed to carry their burden to show the assessment was disproportionate relative to market value and the appeal is denied.

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 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).

Brian and Kathryn Butler v. Town of Belmont

Docket No.: 24609-08PT

Page 7 of 7

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Brian and Kathryn, 16 North Hill Road, Westford, MA 01886, Taxpayers; Chairman, Board of Selectmen, Town of Belmont, PO Box 310, Belmont, NH 03220; and Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: 8/30/10

---

Anne M. Stelmach, Clerk