

**Lynne Fournier Qualified Trust**

v.

**Town of Belmont**

**Docket No.: 24894-09PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of: \$582,200 (land \$349,900; building \$232,300) on Map 107/Lot 020, 119 Tucker Shore Road, a single family home on a 17,424 square foot lot (the “Property”). For the reasons stated below, the appeal for abatement is 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 assessment was excessive because:

(1) newspaper and other sources (in Taxpayer Exhibit No.1) establish the decline in waterfront values and lowered assessments in adjacent municipalities such as Laconia, Sanbornton, Meredith and Tilton;

(2) other waterfront properties in the Town across from the Property on Lake Winnisquam had assessments that were lowered in tax year 2009, but the Property's assessment was not reduced;

and

(3) the land assessment should be reduced by \$17,000 to \$332,900.

The Town argued the assessment was proper because:

(1) the Town performed an update in 2009 and did a prior revaluation in 2007;

(2) the Taxpayer's representative refused the Town's request for an inspection of the house (the last inspection was several years ago) and, without an inspection, the Town cannot be sure the building is properly assessed;

(3) the Property is on Tucker Shore Road which is in a separate neighborhood from the properties across the bay;

(4) one sale on Tucker Shore Road indicated assessments in this neighborhood could be increased (rather than decreased) but the Town decided not to make any changes during the revaluation without more market data; and

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

The parties agreed the level of assessment was 102.6% in tax year 2009, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed and the appeal therefore is denied.

The board held a consolidated hearing on this appeal and on the abutting property at 117 Tucker Shore Road (BTLA Docket Nos. 24895-09PT and 25782-10PT) on November 8, 2011. That abutting property is owned by a related party (Lynne Fournier Trust). In each appeal, the

Taxpayer argued the Town should reduce the assessment on the land by a relatively small amount while leaving the building value unchanged.

Assessments must be based on market value, adjusted by the level of assessment in the Town. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). The Taxpayer presented no appraisal or other direct evidence of the Property's market value but merely argued the land value was overassessed. Mr. Fournier, the Taxpayer's representative, stated the Property's land value should be reduced by \$17,000 as of April 1, 2009 based on the same proportion of reduction (from 2008 to 2009) of land assessments made by the Town on four properties located across the lake on the bay. Two of these properties were sales<sup>1</sup> and the Town adjusted the assessments on the other two properties<sup>2</sup> in accordance with these two sales (See Taxpayer Exhibit 1.) Further, Mr. Fournier submitted two newspaper articles (Taxpayer Ex. No. 1, pp 1-2) which indicated values were declining in the lakes region and on Lake Winnisquam and Lake Winnepesaukee. As further support, Mr. Fournier submitted evidence of sales of two nearby lots, 109 Tucker Shore Road, Map 107/Lot 16 and 111 Tucker Shore Road, Map 107, Lot 17 which both sold in 2010 for a calculated 86.7% and 85.6% respectively of their assessed values (Taxpayer Exhibit No. 1 on pp. 20-21).

There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). The board finds, based on the evidence, there is no basis for adjusting the land assessment by the relatively nominal amount contended by the Taxpayer.

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<sup>1</sup> 115 Jefferson Road, Map 111/Lot 4 and 22 Lakeside Drive, Map 112/Lot 2.

<sup>2</sup> 12 Walnut Street, Map 114/Lot 12 and 21 Gilman Shore Road, Map 111/Lot 69.

The Town acknowledged it did make adjustments to the land values on the four waterfront properties located across the bay from the Property but in a separate neighborhood. In fact, the Town made adjustments to most lakefront properties with the exception of the properties located on Tucker Shore Road which it considered to be in a superior neighborhood with land values increasing. There were three sales in the Property's neighborhood, one was a private sale, one a tear-down and the other was in 2007. The Town weighed these three sales along with the fact the Tucker Shore Road properties were on a peninsula which is a desirable feature. The Town concluded the neighborhood values were "going up" but chose not to increase the assessments in this neighborhood in tax year 2009. The Town stipulated all of the other neighborhoods did not go down at the same rate; some had a 1-2% decline in value while others had a 7-8% decline in value. The neighborhood delineations were based on market transactions and expertise when data was not available. The board finds the Town's methodology to be evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The board agrees with the Town this Property is a superior lot which is quite private, has substantially more water-frontage with a beach (approximately 175 feet) which wraps around the back side of the lot. The Property is located on a 0.40-acre lot on a peninsula with 175 feet of water-frontage on the northwestern side of the lot and 191 feet of water-frontage on the southerly portion of the lot (Municipality Exhibit A). The modern/contemporary house, built in 2004 with an effective area of 2,231 square feet, is well sited on the lot and is assessed at a grade of "Average +20."

No evidence was submitted by the Taxpayer for the board to review whether or not the total assessment of the Property (land and building) was disproportionate. In deciding whether

an assessment is proportional, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a Taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

Even if a Taxpayer wishes to challenge only one component of the assessment, such as the land value, the Taxpayer still has the burden of proving the aggregate value of the Property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007). The Taxpayer did not do so in this appeal.

The board finds the two comparable sales the Taxpayer asked the board to review on Tucker Shore Road are not comparable. A review of the tax map (Municipality Exhibit A) indicates these two properties are three and four lots away from the Property and are not as well situated. According to Mr. Fournier (Taxpayer Exhibit No. 1 on p. 20), 111 Tucker Shore Road (Map 107/Lot 17) sold for \$275,000 on August 19, 2010. This lot is only 0.11 of an acre in size with 43 feet of water-frontage and has a 980 square foot building on it. Lot 17 is assessed at \$317,400 (land \$257,900 and buildings \$54,500). The second property, 109 Tucker Shore Road (Map 107/Lot 16) (Taxpayer Exhibit 1 at p. 21), sold for \$304,000 in April 2010. This lot is only 0.129 of an acre in size with 51 feet of water-frontage and has a 1,528 square foot building on it. Lot 16 is assessed at \$350,400 (land \$260,700 and buildings \$89,700). It is clear these lots are smaller in size and are also not very comparable in terms of water-frontage and improvements.

The Taxpayer's representative also asked the board to consider two newspaper articles to document his contention that properties have decreased in value. The board did note the highlighted portion on page 1 of Taxpayer Exhibit 1 which states: "[y]ou might have to living

[sic] on another planet not to be aware that home values have dropped, but the question is how much?" The article goes on to state, however, that "[d]esireable, nice quality homes still sell in any market and bring fair and reasonable prices that are usually above the averages." In other words, a general market decline need not mean any specific property has been disproportionately assessed. The evidence presented supports a finding that the Property is superior in quality to the ones relied upon by the Taxpayer.

The Taxpayer's representative further argued the Property should be adjusted for the shared well with its adjoining lot (Map 107/Lot 19). The Town testified and the assessment-record card supports the Town made a 5% negative adjustment to the land's condition factor to account for the shared well and a 5% negative adjustment for the easement (access). The Town further adjusted the lot a positive 20% for its superior setting and beach area. The board finds these adjustments are reasonable and no further adjustments are necessary.

Based on all of the above, 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,

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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

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Michele E. LeBrun, Chair

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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: Richard Fournier, 117 Tucker Shore Road, Belmont, NH 03220, representative for the Lynne Fournier Qualified Trust, Taxpayer; 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: 5/4/12

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Anne M. Stelmach, Clerk