

**Thomas F. Hogan and Craig S. Morton**

**v.**

**Town of Pittsfield**

**Docket No.: 25983-10PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 total ad valorem assessment of \$228,400 on the “Property,” consisting of two lots:

Map R27/Lot 10, 125 Jenness Pond Road, a single family home on 0.80 acres (the “House Lot”), assessed at \$210,900 (land \$128,400; improvements \$82,500), with an additional 0.03 acres in current use (“CU”) assessed at \$3; and

Map R27/Lot 10-1, also on Jenness Pond Road (across from the House Lot), a 0.05 acre waterfront lot with a detached deck (the “Waterfront Lot”) assessed at \$17,500 (land \$16,700; improvements, \$800).

(The Taxpayers also own, but are not appealing, five (5) lots in CU with a combined total assessment of \$790 located near the Property, but the parties agreed the Taxpayers’ land in CU was proportionally assessed.) For the reasons stated below, the appeal for abatement on the Property 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 assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment on the Property was excessive because:

- (1) as detailed in Taxpayer Exhibit No. 3, the assessment on the Property increased substantially in 2010, as a result of a Town-wide revaluation, while assessments on other properties in the Town went down “by 15-20%”;
- (2) they obtained two independent appraisals (see Taxpayer Exhibit No.1) which estimate the value of the House Lot as of the assessment date was \$105,000 (the “Shea Appraisal” dated February 16, 2012) and \$158,000 (the “Walsh Appraisal” dated September 22, 2012), respectively, and “averaging” these two estimates leads to a market value estimate of \$131,500;
- (3) the Waterfront Lot is overassessed in comparison to five other waterfront lots that have an average 2010 assessed value of “\$13,126” and those lots are larger and more useable; and
- (4) the assessment on the Property should be abated to a total of \$142,000 (\$131,500 for the House Lot and \$10,500 for the Waterfront Lot).

The Town argued the assessment was proper because:

- (1) the Town completed a revaluation in tax year 2010 and assessments changed throughout the Town during that revaluation;
- (2) as shown in Municipality Exhibit A, the assessment on the Property is consistent and proportional to the assessments of waterfront and water access properties in the same neighborhood;
- (3) the comparables used by the Taxpayers’ appraisers are from other neighborhoods, such as the “village,” most do not have waterfront or water access features and the adjustments made by these appraisers failed to account for these and other differences; and

(4) the Taxpayers failed to meet their burden of proving disproportionality.

The parties agreed the level of assessment in the Town was 107.3%, the median ratio calculated by the department of revenue administration. On February 6, 2012, the board took a view of Jenness Pond, noting the location of the Property and other properties identified by the parties at the hearing, and also viewed the village neighborhood in the Town for comparative purposes.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayers failed to prove the Property was disproportionately assessed in tax year 2010. The appeal is therefore denied.

The two lots that comprise the Property are located very near and on Jenness Pond, with the House Lot situated across the street (Jenness Pond Road) from the Waterfront Lot. On the view, the board noted the desirable location of both lots and the expansive views of the water from the House Lot in comparison to other properties identified in the evidence presented. In this respect, the board does not agree with the descriptions in the Taxpayers' appraisals that the House Lot only has a "limited" view of Jenness Pond (Shea Appraisal) or that the view was "seasonal" rather than year round (Walsh Appraisal).

As prescribed in RSA 75:1, ad valorem assessments must be based on market value. Proportionality is determined by arriving at a reasonable estimate of market value adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).; see also Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

In addition, the Taxpayers are not entitled to an abatement on the Property unless the assessment on their entire estate is disproportional. See Appeal of Town of Sunapee, 126 N.H. at 217:

When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. [Citation omitted.]

Since the parties are in agreement regarding the proportionality of the CU assessments, the Taxpayers had the burden of proving the market value of the Property (consisting of the House Lot and the Waterfront Lot) was below \$212,900 (\$228,400 total assessed value divided by 107.3% level of assessment = \$212,900, rounded, indicated market value).

To determine whether the Taxpayers met their burden of proof, the board considered and weighed all of the 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, "judgment is the touchstone" in evaluating the credibility and probative value of any appraisal and other evidence presented. See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of 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).

The Taxpayers contend the market value of the Property can be established using an "average" (\$131,500) of the two values for the House Lot estimated in the Shea and Walsh

Appraisals and then adding a separate estimated value (\$10,500) for the Waterfront Lot. The board does not agree that this sum (\$142,000) reflects a reasonable estimate of the market value of the Property as of the assessment date for at least five reasons.

First, these two appraisers reached very different conclusions in valuing the House Lot as of the same date. (\$105,000 and \$158,000, respectively -- values that are \$53,000, or more than 50%, apart.) Neither appraiser attended the hearing to explain or reconcile the differences between their disparate opinions of value. Without their testimony and more evidence, the board is unable to determine the credibility of either opinion.

Second, simply ‘averaging’ estimates in two appraisals as the Taxpayers ask the board to do is an inappropriate method of arriving at a reasonable estimate of market value. One valid method of arriving at a market value is to correlate available market data to the unique characteristics of a specific property, rather than computing an arithmetical average, but the Taxpayers did not do so.

Third, the Taxpayers instructed each appraiser to value only the House Lot in isolation, without considering any contributory value of the Waterfront Lot. In other words, these appraisers were asked to ignore a significant feature (direct waterfront access and close proximity) that probably makes a substantial contribution to the overall market value of the House Lot. The board is not persuaded the \$10,000 “view” adjustment applied by each appraiser to their comparables is sufficient to reflect the contributory value of an expansive pond view, close proximity and direct waterfront access. As noted by the Town’s assessor at the hearing, the comparables these appraisers used included unqualified sales and were in inferior “village” neighborhood locations. On the view, the board noted the better location and quality of the neighborhood where the Property is located in comparison to the village, situated some distance

away, where some of the comparables in the Taxpayers' appraisals are located. The board does not agree with the very limited location adjustments in either the Walsh or Shea Appraisals.

Fourth, a review of the Taxpayers' evidence reveals that only one of the eight comparables presented by their two appraisers was on Jenness Pond Road, but this property (365 Jenness Pond Road in the Shea Appraisal) is in another town (Northwood), on a much smaller (0.46 acres) and very narrow lot (with only 10 feet of waterfront) in a cove area of the pond, and has a much smaller house (720 square feet compared to the 1,227 square feet shown on the Property's assessment-record card). 365 Jenness Pond Road sold in June, 2011, 14 months after the April 1, 2010 assessment date, at a price (\$75,000) reflective of these and other significant differences with the Property.

Fifth, one of the comparables in the Shea Appraisal (232 Webster Mills Road) was a foreclosure sale. This fact is acknowledged in Taxpayer Exhibit No. 3, but there is no evidence this appraiser took this circumstance into account in evaluating whether the price reported reflected an arm's-length transaction reflective of the market value of this property.

Further, the board considered, but was unable to place any weight, on the Taxpayers' emphasis on the fact that the assessment on the Property increased by a certain percentage in 2010, while other assessments did not increase or decrease. The Town completed a revaluation in that year and the purpose of a revaluation is to consider and incorporate new information about market values and to correct for any errors in prior revaluations and it can be expected that assessments on different properties will increase or decrease at different rates as a result of a revaluation. Thus, the fact the assessment on the Property increased by a differing percentage relative to other properties is not probative of disproportionality. Among other things, the amount of the increase in the assessment in 2010 could be indicative of underassessment prior to

the revaluation. Moreover, the possible underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

The sales presented by the Town (in Municipality Exhibit A) include properties located on Jenness Pond Road and are supportive of the conclusion that the contributory value of water views and access is likely to be much higher than the \$10,000 adjustment for this factor in each of the Taxpayers' appraisals. 101 Jenness Pond Road sold for \$310,000 in April, 2007 and 73 Jenness Pond Road sold for \$462,533 in March, 2006. These properties include more land and have bigger houses, but their sale prices give some indication of the desirability of a location on or very near Jenness Pond.

The Town presented evidence to indicate the Property was assessed consistently with other properties on Jenness Pond Road. A consistent assessment methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). 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 proportionality and the resulting tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

In summary, there was no credible evidence presented by the Taxpayers that would enable the board to conclude the Property had a market value below \$212,900 (the equalized value of the assessment under appeal) as of the April 1, 2010 assessment date. Consequently, the board finds the Taxpayers failed to meet their burden of proving disproportionality and this tax year 2010 appeal is therefore denied. [The Taxpayers have filed a separate appeal for tax year 2011, which is still pending before the board. (See Hogan v. Town of Pittsfield, BTLA Docket No. 26536-11PT.)]

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).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Thomas F. Hogan and Craig S. Morton, 125 Jenness Pond Road, Pittsfield, NH 03263, Taxpayers; Chairman, Board of Selectmen, Town of Pittsfield, PO Box 98, Pittsfield, NH 03263; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: 2/11/13

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Anne M. Stelmach, Clerk