

**Wayne Clark and Janet Clark**

**v.**

**Town of Washington**

**Docket No.: 27182-13PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2013 assessment of \$185,400 (land \$172,600; building \$12,800) on Map 20/Lot 153, 491 Long Pond Road, a camp on 0.700 acres (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. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers, represented by Wayne Clark, argued the assessment was excessive because:

- (1) they do not feel the Town has adequately accounted for the unique flooding issues associated with the Property in determining its assessed value;
- (2) the Town completed a town-wide revaluation and it would have been appropriate for them to arrive at a market value estimate for the Property, then deducted \$50,000 for the flooding issues as determined in the board's prior decision<sup>1</sup>;
- (3) when Mr. Clark asked the Town's contract assessor "how much" was deducted for the flooding issues, he "couldn't give me a dollar amount but said he took it into consideration"; and
- (4) an opinion of market value of \$97,740 was determined to be appropriate by averaging the selling prices of several comparable sales and then deducting \$50,000 for the flooding issues and the assessment should be abated accordingly.

The Town argued the assessment was proper because:

- (1) the sales utilized by the Taxpayers are not comparable to the Property for various reasons as they all have significantly less area, less water frontage, one does not have road frontage and can only be accessed by a boat and another is not waterfront but is only a "water view" property;
- (2) the Property is approximately 0.7-acres in size and the abutting, unimproved property with 0.17-acres sold for \$135,000 in July, 2011, which is an indication the Property's assessed value is reasonable;

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<sup>1</sup> In a prior appeal involving the same parties and Property, the board determined the Property had a market value of \$205,000 and an appropriate assessment for the 2010 tax year was \$192,100. See Wayne and Janet Soule Clark v. Town of Washington, BTLA Docket No. 25951-10PT (March 18, 2013).

(3) the Property is on a point with excellent views of the water, has approximately 350 feet of water frontage, the camp is in very close proximity to the water and these are features that enhance the market value of the Property; and

(4) the comparable sales depicted on Municipality Exhibit A support the proportionality of the assessment and the appeal should be denied.

At the conclusion of the hearing, the board viewed the Property with Mr. Wayne Clark and the Town's Contract Assessor, Mr. David Mazaroff. The board then directed its RSA 71-B:14 Review Appraiser to investigate the comparable sales presented by the parties and issue a written report of her findings. Cynthia L. Brown completed this investigation and reported her findings to the board on August 20, 2015 (the "Brown Report") and a copy was forwarded to the parties. The parties were given ten (10) days to file a response to the Brown Report; neither party chose to do so.

The parties agreed the level of assessment was 100.5% for the 2013 tax year, as calculated by the department of revenue administration.

### **Board's Rulings**

"In an abatement case, the Taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town." Appeal of Sokolow, 137 N.H. 642, 643 (1993). This burden can be carried by establishing that the Taxpayer's Property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003).

Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119

N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions).

This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

After a review of all the evidence presented, including the board's own view of the Property and the Brown Report, the board finds the Taxpayers did not meet their burden of proving the assessment was disproportional. Therefore, the appeal is denied.

The Property is a 0.70-acre lot improved with a small cottage with approximately 350 feet of water frontage on Highland Lake. The Property is at the end of a long, steep gravel road and the surrounding development is primarily other seasonal properties. The water frontage is generally rocky and undulating. The cottage is very small (approximately 400 square feet), but appears to have been very well maintained, and is in very close proximity to the water frontage. The Taxpayers testified and presented evidence that, due to its close proximity (approximately four to eight feet) to the water, the cottage has flooded twice since 2007.

The Taxpayers did not present an appraisal to determine the April 1, 2013 market value of the Property, the date of this appeal. Instead, the Taxpayer presented the "Whittemore Appraisal" prepared by Paula J. Clemente who estimated the Property had a market value of \$185,000 as of April 1, 2010 (three years prior to the date of appeal), and testified it overstated the value as it did not take into consideration the impact the flooding issues have on market value. (See Taxpayer Exhibit No. 1.) The Taxpayers relied primarily on five comparable properties. Mr. Clark testified the market value of the Property was \$147,740 based on the

average sale price of the comparable properties, but a deduction of \$50,000 for flooding issues was appropriate resulting in a final opinion of value of \$97,740.

The board could place no weight on the comparables presented by the Taxpayers for several reasons. First, averaging sales, as done by the Taxpayers, is not a conclusive method of establishing market value since mathematical averaging ignores the unique characteristics of properties. Rather, analyzing, comparing and weighing sales data then correlating the most pertinent aspects of the sales to the Property arrives at the best indication of market value. Second, of the five properties presented, three (22 Lookout Point Road, 18 Lookout Point Road and 2041 Valley Road) were offered for sale but did not sell. Of the two properties that sold, one (749 Half Moon Pond Road) is too different from the Property for the board to draw any inference to the Property's market value (see Taxpayer Exhibit No. 4 and Brown Report) and the other (48 Cove Road which sold for \$140,000 in October, 2014), after adjustments are made for differences between it and the Property, lends some support to the proportionality of the assessment.

For its part, the Town presented nine comparable sale properties on Highland Lake. The board finds the best evidence of market value is three of the comparables and these sales are summarized below. (See Municipality Exhibit A; see also the Brown Report, pp. 3-4.)

<b>Sale Date</b>	<b>Address</b>	<b>Sale Price</b>	<b>Lot Size/ Improvement Size</b>	<b>Water Frontage</b>
3/2012	686 East Shore Drive	\$156,750	0.77 acres 850 square feet	120 feet
10/2011	29 Stoddard Point Way	\$190,000	0.8 acres 700 square feet	100 feet
5/2013	2485 Valley Road	\$210,000	0.43 acres 744 square feet	210 feet

The Property is unique in that the improvements are much smaller than the comparable sale properties; however, the Property has significantly more water frontage than the comparable properties. After adjustments are made to those comparable properties to account for differences between lot size, improvement size, age, condition, location and amount of water frontage, the sales data supports the proportionality of the assessed value under appeal.

In this appeal, the board finds no further reduction in assessed value is appropriate for the flooding issues as the Town's assessor testified he took those issues into consideration. While there is no doubt the Property did flood severely in 2007, that incident was a catastrophic flooding event that impacted many properties throughout the state. The Taxpayer testified the second flooding event was relatively minor in comparison to 2007, and therefore the board finds the flooding issues are not so severe as to warrant an additional reduction to the assessed value.

To the extent the Taxpayer argues the location of the cottage in such proximity to the water is a factor that negatively impacts the Property's market value, the board does not agree. In the board's experience, the majority of people in the market for waterfront property would consider where the cottage is sited on the lot a positive, not negative, attribute of the Property.

For all the reasons discussed above, the board finds the Taxpayers did not meet their burden of proving the assessment was disproportional. Therefore, 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).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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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: Wayne and Janet Clark, 45 Shermans Way, Marshfield, MA 02050, Taxpayers; Chairman, Board of Selectmen, Town of Washington, 7 Halfmoon Pond Road, Washington, NH 03280; and M & N Assessing Services, LLC, Dave Marazoff, 354 Glebe Road, Westmoreland, NH 03467, Contracted Assessing Firm.

Date: 10/22/15

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Anne M. Stelmach, Clerk