

**Charles and Diane Interbartolo**

**v.**

**Town of Piermont**

**Docket No.: 27293-13PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2013 assessment of \$167,800 (land \$71,200; building \$96,600) on Map U02/Lot 65, 2 Sirecho Shores, a cottage on 1.2 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 argued the assessment was excessive because:

- (1) as stated in Taxpayer Exhibit No. 8, they purchased the Property in the Sirecho Shores development in 1988;
- (2) the Property was formerly part of a summer camp converted into a 35 lot subdivision;

(3) 12 of the subdivided lots, including the Property (depicted as “Lot #34”), are not on the waterfront, but have deeded, undivided (“common access”) to a waterfront lot (depicted as “Lot #18”) on Taxpayer Exhibit Nos. 1 and 4);

(4) as shown on the assessment-record cards (“ARCs”), the Town in tax year 2013 made water access assessments of \$40,000 for each improved lot and \$5,000 for each unimproved lot and the \$40,000 assessment on the Property, an improved lot, is excessive;

(5) in assessing both the improved and unimproved lots, the Town should have placed some weight on a 2010 sale of an unimproved back lot with water access for \$5,000; and

(6) the assessment on the Property should be abated to \$127,800 (the 2011 tax year assessment) and the appeal should be granted.

The Town argued the assessment was proper because:

(1) the Taxpayers did not present an appraisal or other market value evidence and the appeal should have been dismissed<sup>1</sup>;

(2) the difference in condition factors shown on the ARCs for improved and unimproved lots in tax year 2013 (40% versus 5%, resulting in \$40,000 and \$5,000 adjustments) reflects the Town’s judgment of the contributory value of the water access feature to the overall market value of each lot;

(3) the Town followed a consistent assessment methodology with respect to the assessment of improved and unimproved back lots with water access; and

(4) the Taxpayers failed to meet their burden of proving disproportionality and the appeal should be denied.

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<sup>1</sup> The Town’s oral motion to dismiss this appeal (at the hearing after the close of the Taxpayers’ presentation) was denied because the board found the Taxpayers had presented sufficient market data to withstand a motion to dismiss, if not to meet their burden of proving the Property was entitled to a tax abatement in tax year 2013.

The parties did not dispute the level of assessment in the Town for tax year 2013 was 102.2%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayers failed to meet their burden of proving the tax year 2013 assessment on the Property was disproportional. The appeal is therefore denied for the following reasons.

As prescribed in RSA 75:1, the proportionality of an assessment is based on a credible 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).

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).

The \$167,800 assessment, adjusted by the agreed-upon level of assessment in the Town in tax year 2013 (102.2%), results in a market value indication of \$164,200, rounded, for the Property. In order to obtain an abatement, the Taxpayers were obligated to satisfy the burden of proving the Property had a market value materially less than this indicated \$164,200 value.

Even if a taxpayer wishes to challenge only one component of the assessment, such as the land value or the building 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). Thus, focusing on only one

aspect of the assessment shown on the ARC (the \$40,000 water access element) cannot carry the Taxpayers' burden of proving the assessment as a whole was disproportional.<sup>2</sup>

The evidence presented by the Taxpayers did not include an appraisal or other credible evidence to establish the market value of the Property in tax year 2013. They argued the Town should have relied upon a 2011 sale of a backlot for \$5,000 (identified at the hearing as "Lot # 46" or the "Caswell" property; see ARC included in Taxpayer Exhibit No. 7). This lot, however, is quite small, unimproved and, in the Taxpayers' own words, is "unbuildable." (See Taxpayer Exhibit Nos. 4 and 8.) The evidence they presented indicates the sale of Lot 46 was motivated by the purchaser's desire to have "a place to store their boat" in order to access a "home on the island." (Id.) These factors substantially diminish the comparability of this sale as an indication of the value of the Property, which is improved with a cottage and a garage and is on a much larger lot (1.2 acres compared to 0.1 acre), as well as providing deeded water access due to Lot 18 (as noted above).<sup>3</sup>

The Taxpayers state the Town added the \$40,000 water access value to most of the lots in 2012, but did not do so to the Property until 2013. The Town's assessor explained this delay was due to the later discovery that the Property had deeded water access. (See Taxpayer Exhibit No. 3, an August 22, 2013 letter to the Taxpayers explaining these facts.) The board finds this explanation to be reasonable; in fact, the delayed assessment gave the Taxpayers a benefit they would otherwise not have been entitled to (a lower assessment in 2012).

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<sup>2</sup> The Town acknowledged at the hearing the separate "water access" land line entry on the ARC was potentially confusing to some property owners. This practice, however, does not result in "double taxation" (a phrase mentioned in Taxpayer Exhibit No. 8). Regardless of how the total assessment is compartmentalized, the law is clear that no abatement is warranted unless the assessment as a whole is disproportional.

<sup>3</sup> To the extent the Taxpayers and their neighbors believe the total contributory water access value of the lots with deeded access to Lot #18 cannot exceed the market value of that waterfront lot (if it were to be sold separately), the board does not agree. (Cf. Taxpayer Exhibit No. 6.)

The Town stated they relied upon the June, 2010 sale of the “Donovan” property in establishing land values during the 2011 Town-wide revaluation. This property, a 0.22-acre lot improved with a small single-family residence with deeded water access to Lake Armington, sold for \$147,500. (See Taxpayer Exhibit Nos. 5 and 7.) The Town argued this sale of an improved lot provided a better indication of market value for the Property than the Caswell sale. The board agrees and finds the Town’s reliance on the Donovan sale is understandable due to the lack of other comparable sales in the Town in the relevant period.

The Town also presented evidence of a consistent assessment methodology. (See, e.g., Municipality Exhibit A, an ARC for another improved backlot in Sirecho Shores with a \$40,000 water access adjustment to the land value.) Use of a consistent assessment methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

For all these reasons, 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

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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, 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: Charles and Diane Interbartolo, 21 Myrtle Terrace, Wakefield, MA 01880, Taxpayers; Chairman, Board of Selectmen, Town of Piermont, PO Box 67, Piermont, NH 03779; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 9/18/15

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Anne M. Stelmach, Clerk