

Marston Realty Trust

v.

Town of Meredith

Docket No.: 16890-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$22,200 on a vacant 25,500 square-foot lot (the Property). The Taxpayer also owns, but did not appeal, two other lots in the Town with a combined \$271,600 assessment. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property is burdened by two electric easements;

- (2) the Property has a cemetery on it, which requires certain setbacks for any building and for any well;
- (3) the lot is nonbuildable;
- (4) the Property's road frontage is limited due to the road's actual location as compared to the location shown on the subdivision plan; and
- (5) the Property should have been valued as part of the other two lots.

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The Taxpayer also reviewed the history of the Property, the surrounding properties and the road. Furthermore, the Taxpayer discussed the Town's comparables and why those comparables were not good indicators of the Property's value.

The Town argued the assessment was proper because:

- (1) the Town allows nonconforming lots to be built on and has been liberal in granting variances for such lots;
- (2) it considered the easements and the Property's undeveloped state;
- (3) the Taxpayer has control of the abutting lots and driveway and could have granted access to the Property;
- (4) the Property was a separate lot that could have been conveyed;
- (5) the Taxpayer did not merge the lots until 1998;
- (6) the Property's deed requires that the Property (tax map lot 3) and tax map lot 2A be conveyed together, and the total \$24,900 assessment on those lots was reasonable;
- (7) the Property has the right to use the nearby beach lot; and
- (8) it was supported by the sales of vacant land.

The Town also stated it measured the cemetery as 11' by 15' from granite post to granite post.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to show the Property was overassessed.

The pivotal issue in this case is whether the Property should be viewed as a separate lot, should be viewed in combination with tax lot 2A, or should be viewed as part of an assemblage of all three lots -- lot 2, lot 2A and lot 3 (the Property). The board finds that under all of these approaches, the Property was not overassessed.

In establishing assessments, properties must be assessed at their highest and best use. The evidence established that the Property's highest and best use was as a separate lot or as a lot in combination with lot 2A.
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The Taxpayer's major argument against such a conclusion was the lack of access for the Property, on its own or in combination with lot 2A. Given the Taxpayer's control of access, the Town was correct when it asserted that a property owner trying to maximize the value of the Property would create some type of access for the Property and would then sell the Property. It was unrefuted that the Town viewed the Property as a separate lot or, at least, a separate lot when joined with lot 2A. Further, the Town would grant a building permit and has a record of liberally granting variances. Moreover, the Taxpayer's assertion that the Property was unbuildable was based on viewing the Property on its own, and certainly, viewing the Property in conjunction with lot 2A makes the Taxpayer's assertion even less supported.

On the value side, the Taxpayer did not present any evidence to support its assertion that the Property should have been assessed for \$3,300. On the other hand, the Town presented comparables that demonstrated that the

assessment was in line with other lots that had waterfront access. Even if viewed as a separate lot, the Property has significant value because of its close proximity to the lot 88 water access lot.

In addition to this market view of the Property, i.e., what is the highest and best use of the Property, there is also the issue of whether the Taxpayer's entire taxable estate was overassessed or not. When a taxpayer owns more than one property in a municipality but chooses to appeal the assessment on some but not all of the properties, the board must still consider the assessments on the taxpayer's nonappealed properties in the same municipality. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). A taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of the properties is disproportionate. See also Bemis Brothers Bag Co. v. Claremont, 98 N.H. 446, 451 (1954) ("Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant."). Therefore, when a taxpayer owns more than

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one parcel, an appeal for abatement on any one property will always require consideration of the assessments of any other properties.

The board finds the Taxpayer did not show the overall estate was overassessed. Specifically, even if the board had concluded that the Property should be considered merely as part of the assemblage of all three lots, the Taxpayer failed to show that all three lots, when viewed as an assemblage, were overassessed.

In conclusion, a property's value is based on what legal rights the property owner has. The evidence established that the Taxpayer had the legal

right to convey the Property separately from the main house lot. Clearly, such a right, especially when coupled with waterfront access, is worth more than \$3,300 as asserted by the Taxpayer.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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(e). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles S. Marston, III, Trustee of Marston Realty Trust, Taxpayer; and Chairman, Selectmen of Meredith.

Date: July 23, 1998

Valerie B. Lanigan, Clerk

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