

Stephen and David Parker

v.

Town of Alton

Docket No.: 17264-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 adjusted assessment of \$2,180,800 (land \$1,720,100; buildings \$460,700) on a 10-acre lot with a marina, boat storage, and 175 boat slips (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) boat slips are overassessed in relation to other boat slips on Lake Winnepesaukee;

- (2) the size of the boat which can be docked at the marina is limited because the bridge accessing the lake has a clearance of only 4 to 5 feet;
- (3) the Property's location is remote from most of the lake's islands;
- (4) due to the above restrictions, there is a large turnover of renters and the slip charges are 40% less than slip charges at other facilities;

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- (5) the income and expenses of the slips do not support a \$9,000 slip value;
and
- (6) the assessed value should be \$5,000 per slip.

The Town argued the assessment was proper because:

- (1) the assessment was reviewed, physical and functional adjustments were made to the building and also a frontage adjustment was made;
- (2) the slip value has been adjusted for the bridge factor;
- (3) based on sales at Riverlake, a \$9,000 slip value is appropriate;
- (4) there are errors in the treatment of some slips on the lake which are being corrected (specifically Smith Point and Roberts Cove); and
- (5) the "slip" lot size factor should be corrected to 1.0 for a proper assessment of \$2,220,200.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property as a whole was disproportionately assessed and more specifically failed to prove the boat slips were disproportionately assessed.

Both the Taxpayers and the Town agreed that the Property's highest and best use was its existing use, as a marina with boat storage and 175 boat slips. The board concurs with this finding.

The parties agreed to the abated values of the buildings, building site, and land (excess rear and front foot). However, the parties disagreed as to the value of the boat slips, the Town arguing the \$9,000 per slip assessment was a reduced figure based upon a \$15,000 value adjusted by the bridge factor¹, and the Taxpayers estimating a \$5,000 per slip value.

The board has extensively reviewed all of the evidence submitted by the parties and finds that the Taxpayers did not carry their burden in showing disproportionality.

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Mr. Russell Thibeault (Thibeault) of Applied Economic Research (AER) prepared and submitted a "1996 Assessment Review" (TP Ex. #6) and also testified at the hearing. Mr. Thibeault performed a cursory income approach of the slips using 1996 actual income figures. The board asked for and received the income data (TP Ex. #8) from which he performed his analysis. Mr. Thibeault found the actual per slip income in 1996 to be \$679, allowed expenses of management (5%), replacement reserve (10%), and marketing, labor, etc. (5%) for a net operating income of \$543. He then used a capitalization rate of 10.8940% (9.500% overall rate and 1.2940% tax factor) for a capitalized value of \$4,983 per slip.

The Taxpayers' "Table 3² Summary of competitive marina rates" in TP Ex.

¹ The Town stated the lot size factor for the boat slips should be 1.000 not 0.9750 as indicated on the assessment-record card for a total assessment of \$2,220,200.

² Table 3 appears to be a document pulled from another AER report as the notations on the bottom of the page suggests. Further, the date of the survey was April 1998 and the date of the assessment under appeal is April 1996. It

#6 has handwritten under the typewritten information the following:

Parker Marina \$52/ft

Generally 17' to 19' boats = \$900 to \$1,000

This evidence alone is misleading as the evidence in TP Ex. #8 (the document the board asked to have submitted) clearly shows that larger boats, up to 25 feet, are renting slips at \$1,000 to \$1,350 per slip. A review of TP Ex. #8 resulted in the following findings:

- . seven slips generated no income (owner use, donation to Channel 11 auction, no charges);
- . the total number of slips listed was 169 not 175;
- . 38 slips generated income from \$1,000 per slip to \$1,350 per slip for 20 to 25 foot boats;
- . 70 slips generated income from \$700 to \$975 per slip

Based on the information in TP Ex. #8 the income analysis performed by Thibeault is of little value to the board. At least 13 slips were not charged or income was not reported; and 108 slips generated income higher than the per slip income used in his income approach. Mr. Thibeault should have reviewed

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with the actual income to determine an effective gross income to which a vacancy rate could then have been applied. Further, he provided no documentation to support his expenses and capitalization rate. The board finds this analysis results in an estimate of value that has no weight.

There was evidence indicating that some slip assessments were improper (too low) and the Town stated it was in the process of correcting those

is unclear whether the handwritten notations reflect 1996 or 1998 charges.

assessments. The Taxpayers argued their slip assessments should be in line with these assessments. The board has reviewed the evidence submitted and it appears the Town has inconsistently assessed some properties. However, the evidence of inconsistent assessments does not prove that the subject's boat slips were overassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value is the proper standard to determine proportionality, not just a comparison to a few other similar properties. e.g., *id.*

The Town testified that the value placed on the slips was discounted by approximately 40% due to the low bridge clearance resulting in a reduced value of \$9,000 per slip. The board finds the value to be reasonable based on its extensive review of the evidence and its own judgement. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). 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).

Lastly, as the board indicated during the hearing, the board must look at the total value of the Property because this is how the market views value. The parties agreed that the highest and best use of the Property was as an operating marina, not as individual boat slips. 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). The Taxpayers presented no evidence of the value of their Property based on its highest and best use to support its claim of overassessment. The board reviewed the assessment-record cards and the values placed on the entire Property and finds an assessment of \$2,180,800 is reasonable.

The Town indicated during the hearing that the original value of \$2,523,500 had not yet been abated to its revised assessment of \$2,180,800; therefore, if the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$2,180,800 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1997. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Russell W. Thibeault, Agent for Stephen and David Parker, Taxpayers; David C. Wiley, Agent for the Town of Alton; and Chairman, Selectmen of Alton.

Date: September 2, 1998

Valerie B. Lanigan, Clerk