

Barbara Townsend, Docket No.: 17924-98PT
Frances G. Moore, Docket No.: 17932-98PT
John S. Grant, Docket No.: 17935-98PT
Thomas P. & Amy Wheeler Sullivan, Docket No.: 17984-98PT

v.

Town of Center Harbor

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessments of the following:

Docket No.: 17924-98PT (Unit 4) - \$134,600 (land \$115,000; building \$19,600);

Docket No.: 17932-98PT (Unit 2) - \$135,100 (land \$115,000; building \$20,100);

Docket No.: 17935-98PT (Unit 1) - \$158,400 (land \$115,000; building \$43,400); and

Docket No.: 17984-98PT (Unit 3) - \$147,400 (land \$115,000; building \$32,400);

on four residential condominium units, each with a one-sixth interest in the common land (the "Properties"). At the Taxpayers' request, these appeals were consolidated for hearing. For the reasons stated below, the appeals for abatement are denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessments were excessive because:

- 1) the Laurel Glen Association was formed in the early 1970's and consists of six units (one year-round residence and five log cabins) each owning a one-sixth interest in the common land;
- 2) the land assessments on these units should be the amount assessed during the 1996 revaluation, \$312,000 or \$52,000 per unit;
- 3) because of the recent sales of two of these units, the Town increased the land assessments of these Properties, which is "spot" assessing;
- 4) the Town changed the assessments after learning that Unit 5 had a limited common area of .44-of an acre and as a result of that change, the land assessments on Units 1, 2, 3 and 4 were increased to \$115,000 for the 1998 tax year (the assessment on Unit 6, the year-round residence, remained unchanged);
- 5) Unit 6 has the same access to the lake and the same interest in the common area as Units 1, 2, 3 and 4; therefore, these four units' land assessments should have remained \$52,000;
- 6) the Properties are on a channel and the water is full of muck; the channel has been dredged twice as it gradually fills back in and it is often difficult to get boats in and out of the water; the views of the water are limited;

7) in Locke Lake Colony Assoc. v. Town of Barnstead, 126 N.H. 136 (1985) the supreme court

stated "...when property is so encumbered with easements that no use can be made of it, it has no taxable value for property tax purposes.";

8) the land assessments of similar neighboring properties support the overassessments of these Properties; and

9) comparable sales indicate properties are selling for approximately twice their assessed values; therefore, the Properties should be assessed at half their market values.

The Town argued the assessments were proper because:

1) the Town was not aware of the two sales which took place in the association (Unit 3 in March, 1994, and Unit 2 in October, 1996) at the time of the revaluation; therefore, due to error or omission, these Properties were not properly assessed and needed to be revised; and

2) the Properties are fairly assessed when compared to the average level of assessment in Town; to change their assessments would place the burden on other taxpayers in the Town.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Properties were disproportionately assessed.

The Taxpayers did not dispute the Properties' market values when equalized by the 1998 equalization ratio of 95%; however, the Taxpayers argued the Properties should be assessed at 50% of their market values because the land values were overassessed when compared to other lakefront properties in the Town and when compared to Unit 6 in Laurel Glen Association. They argued each unit's land assessment should be based upon the acreage of the limited common area (as the Town has done for Unit 5). Further, citing Locke Lake Colony Assoc., supra, the

Taxpayers argued the remaining common area should have no value because it is encumbered by easements and restrictions.

In the Locke Lake Colony Assoc. case, the association was the entity being taxed rather than the individual owners of the units. As enumerated by the court, “Although a landowner whose property is subject to an easement is entitled to a reduced valuation for property tax purposes, the value of the easement is added to the estate of the dominant owner.” Id. at 141. This is exactly what the Town has done in this case. The Town has not assessed the land owned by the Laurel Glen Association; rather it has assessed the undivided interest each unit has in the common land to each property owner.

The Taxpayers argued the restrictions on the use of the common land was a detriment to its value; however, item #12 of the February 25, 1974 Declaration (which incorporates the By-Laws) allows amendment by 66-2/3 affirmative vote of the unit owners. Given that the association consists of a total of six unit owners, an affirmative vote of four unit owners would be necessary to amend the restrictions. Therefore, the board does not find the Town acted inappropriately by valuing the interest owned in the common area as part of each Taxpayer’s assessment.

In making a decision on value, the board looks at the Property’s value as a whole because this is how the market views value. Moreover, 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). Two of the four units sold prior to the 1996 revaluation: Unit 3 sold for \$145,000 in March, 1994; Unit 2 sold for \$142,500 in October 1996;

and Unit 1 sold for \$196,000 in March, 2000. The 1998 equalization ratio for the Town of Center Harbor was 95%. There is no dispute that the assessments of the four units, when equalized by the 95% ratio, support their indicated market values based on the sales data. The Taxpayers challenge the 95% ratio arguing that nearby lakefront properties are assessed at approximately 50% of their market values and ask the board to assess these Properties at 50% of their market values.

Under the New Hampshire Constitution, citizens are required to contribute their share of governmental costs. N.H. Const., pt. 1, art. 12. Such contributions (i.e., taxes) must be “proportional and reasonable [in] assessments, rates, and taxes***.” N.H. Const., pt. 2, art. 5.

In Appeal of Andrews, 136 N.H. 61, 64 (1992), the court held the above-cited constitutional provisions require that all taxpayers in a town must be assessed at the same proportion of market value. Moreover, the court stated that to establish disproportionality, a taxpayer must show that its assessment was higher than the general level of assessment in the town. The court made it clear that proportionality was to be judged across the entire town rather than only by property type. Therefore, to comply with the constitutional obligation of proportional assessment, municipalities are obligated to ensure properties are assessed at the same general level of assessment prevailing throughout the town.

Thus, a taxpayer does not show disproportionality that would qualify for an abatement by showing a certain segment of property was assessed below the general level of assessment.

Abatements are only granted when property is assessed disproportionately high because such an assessment results in a taxpayer paying more than its share of taxes. The courts have held that in

measuring tax burden, which is really what an abatement case is about, market value and the general level of assessment in the community are the proper yardsticks to determine proportionality, not just a comparison to other similar properties.

Based on the information provided by the Taxpayers, the Properties may have been assessed higher than some other lakefront properties, but that is not the standard for granting an abatement. See Appeal of Canata, 129 N.H. 399, 401 (1987) (underassessment of some properties does not prove the overassessment of another's property). In such a situation, the remedy would be for the Town to correct the assessments on the underassessed properties.

The Taxpayers argued the Town was "spot" assessing when it increased their assessments in 1998. The Town stated the two sales of Units 2 and 3 were not available to them at the time of the revaluation; therefore, it was appropriate for the Town to revise the assessments when it came to their attention that this information had been omitted. RSA 75:1 requires that property be assessed at market value. Additionally, RSA 75:8 requires municipalities to annually review assessments and to make any adjustments necessary to assess properties correctly. Given that the sales data was not available at the time of the revaluation, it was reasonable for the Town to review and adjust the assessments of the properties in Laurel Glen Association. The board finds the Properties are fairly assessed when compared to the average level of assessment in the Town.

The Town agreed that there were inconsistencies in the assessments of the lakefront properties and indicated an update was planned for the tax year 2000. The assessor was recommending the Town as a whole be updated, not just the lakefront properties. If the Town

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does not conduct a revaluation for the 2000 tax year, the board may consider asserting its jurisdiction under RSA 71-B:16 to investigate whether a town-wide revaluation is necessary.

The board urges the Town to consider more fully the need for a complete revaluation, not just an update to the lakefront properties.

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

Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Barbara Townsend, Taxpayer; Jeffrey M. Earls, Representative for the Town of Center Harbor; and Chairman, Board of Selectmen of Center Harbor.

Date: June 29, 2000

Lynn M. Wheeler, Clerk

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