

**James P. and Barbara Slowey**

**v.**

**Town of Belmont**

**Docket No.: 18213-99PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1999 assessments on Map 27, "Lot 47" of \$101,770 (land \$25,410; buildings \$76,360) on a 0.24-acre lot with a single-family home; and Map 27, "Lot 49" of \$42,590 (land \$20,420; buildings \$22,170) on a 0.28-acre lot with a single-family home (the "Properties"). 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 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, 38 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 building assessment on Lot 49 (rear lot) should have been removed as the building had been vandalized and subsequently razed. All that remained on April 1, 1999 was a pile of debris;
- (2) the Town's assessor should have been aware of the vandalism damage to the building that occurred in the fall of 1998 because the police department had filled out a damage report;
- (3) given its size (0.28 acres), Lot 49 was an unbuildable lot after the building was removed and had a value of \$4,500-\$5,000 on April 1, 1999;
- (4) the two building permits issued on September 25, 1997 and April 14, 1998 for Lot 47 (waterfront lot) totaled \$27,200. One half of this total was for renovations, with the balance for demolition; and
- (5) there was no increase in the room count of the structure on Lot 47, merely a reconfiguration of the room layout between floors and the assessment should stay the same.

The Town argued the assessments were proper because:

- (1) the Taxpayers' permit (Taxpayer Exhibit #10) to demolish the structure on Lot 49 was issued on April 30, 1999. This is some indication the structure was still there on April 1, 1999, the effective date of the assessment;
- (2) the Taxpayers have not presented any evidence of market value for either Property to rebut the current assessments; and
- (3) the assessments were correct as shown on April 1, 1999.

After the hearing, the board directed its review appraiser, Mr. Stephan Hamilton, to

review the file, complete an interior and exterior inspection and perform a valuation of Lot 47<sup>1</sup> and file a report. The board reviews and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendations. The parties were sent a copy of the report and given an opportunity to review and comment on it. Neither party submitted any comments.

### **Board's Rulings**

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

First, in determining whether an abatement is warranted, the Taxpayers' entire estate must be considered. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). A taxpayer is not entitled to an abatement on an individual property unless the aggregate valuation placed on all of the properties in a taxpayer's estate is disproportionate. See also Bemis Bros. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954). Consequently, while the board's analysis will address each of the two lots appealed, its conclusion that an overall abatement is warranted must be based on the aggregate valuation placed on both of the lots.

The Taxpayers argued the assessment on Lot 49, the non-waterfront lot, was incorrect because the building that was on it had been vandalized and removed prior to April 1, 1999. They further argued the lot was unbuildable after the building was removed, reducing its market value. In support of this argument, the Taxpayers presented a permit to raze the building dated

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<sup>1</sup> Mr. Hamilton stated in his report that Lot 47 was not appealed to the board when, in fact, it was.

April 30, 1999, subsequent to the April 1, 1999 assessment date. The Taxpayers testified this permit was obtained after the building was removed to comply with a local regulation. The board was convinced by the Taxpayers' testimony that the building was substantially, if not completely, razed as of April 1, 1999, but the Taxpayers provided no evidence to substantiate their claim that the lot was unbuildable and, thus, worth only \$4,500 to \$5,000 as of April 1, 1999. The board finds the aggregate equalized assessment of the Properties (Lot 47 and Lot 49) is lower than the market value regardless of whether the building value on the non-waterfront lot is included or not.

At the hearing, the Taxpayers testified the assessment on the waterfront property (Lot 47) should not have changed because even though work had been done on the building, the number of rooms did not change, only the layout. They argued the value of the Property had not improved even though the improvements had been updated. The board did not find this evidence convincing. Based on the board's experience,<sup>2</sup> along with the testimony and photographs submitted at the hearing, the board questioned the appropriateness of Lot 47's assessment. Therefore, the board ordered Mr. Hamilton to perform an appraisal of Lot 47. Mr. Hamilton utilized three comparable sales which, when adjusted, indicated the market value of Lot 47 as of

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<sup>2</sup> The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

April 1999 to be \$165,000. He then adjusted for the Town's .89 equalization ratio indicating an assessed value of \$147,000.

The board finds the best evidence of value for Lot 47 to be that determined by Mr. Hamilton because his report contained the only evidence of market value. Therefore, the board finds just as Lot 49 was overassessed as of April 1, 1999, Lot 47 was underassessed as of April 1, 1999.

RSA 75:8 requires the selectmen/assessors to annually "examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal; and such corrected appraisal shall be made a part of the inventory. . . ." Surely, under its RSA 75:8 obligations, the Town should have adjusted the assessment of Lot 49. But just as surely, the Town should have caught the underassessment of Lot 47. ". . . [W]e are convinced the ideal of fair and proportionate taxation can be approached only through a constant process of correction and adjustment of assessments. RSA 75:8, indeed, requires selectmen and assessors to engage in just such continual revision by examining appraisals for error each year." Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986).

For the Taxpayers to carry their burden to prove the Properties were disproportionately assessed, they would have had to have shown that the aggregate market value of the Properties is less than the aggregate equalized assessed value. Such a showing was not made, therefore, the board finds the Taxpayers have not met their burden of proof and their appeal is denied.

The board's ruling at the hearing that the subsequent year provision of RSA 76:17-c did not apply to this appeal because the Town was reassessed in tax year 2000 is moot because the appeal is denied.

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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: R. Peter Shapiro, Esq., counsel for the Taxpayers; and Chairman, Selectmen of Belmont.

Date: October 1, 2001

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Lisa M. Moquin, Clerk