

Paul F. Young, Ruth C. Young, Hilda W. Worden and Carol Worden

v.

Town of Meredith

Docket No.: 18330-99PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of \$136,100 (land \$125,800; buildings \$10,300) on a 30,120 square-foot lot with a one-bay boathouse (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, 38 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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) it increased 67% between 1996 and 1999;
- (2) the Shoreline Protection Act prohibits removal of the trees along the shore making it difficult

to have a nice swimming area;

(3) the lot has limited building potential because of setback restrictions;

(4) the marina on the south side of the Property has a significant amount of boat traffic in close proximity to the Property and fluid spills in the water from the marina encroach on the Property;

(5) there are two large dumpsters at the marina that frequently emit strong, unpleasant odors, especially during warm weather;

(6) there is a parking area and an undefined right-of-way with a dock in an inappropriate location on the north side of the Property that provides access to Pine Island for three property owners there. There is vehicular traffic on this right-of-way that causes unpleasant noise and lights on the Property; and

(7) the market value of the Property was between \$100,000 and \$125,000.

The Town argued the assessment was proper because:

(1) the Property is a grandfathered, buildable lot with 127 feet of water frontage; also, up to 50% of the trees along the shore can be cut under the Shoreline Protection Act;

(2) the general nature of most waterfront properties is that there is bound to be some congestion;

(3) the adjustments made to the land section on the assessment were appropriate and take into account all factors that affect that portion of the value of the Property; and

(4) some of the increase in the assessment is due to the assessor more accurately reporting and valuing all the Property's attributes, including its water frontage, after receiving a deed from the Taxpayers in March, 1999.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

The Taxpayers argued the Property's assessment increased substantially between 1996 and 1999 without the Town doing a complete town-wide revaluation. During 1999, the owner transferred the Property into a trust. The Town testified that as a result of receiving notification of this transfer, it reviewed the Property's assessment as it would the assessment of any other property that transferred. During its review, the Town deduced the Property had not been accurately described and valued during the last town-wide revaluation inasmuch as it had not been noted that the Property was a waterfront property or valued as such. The assessor testified she is required by RSA 75:8 to review and adjust assessments found to be inaccurate. While the Taxpayers expressed skepticism as to how the Property's water frontage could have been missed during the previous revaluation, the board concurs with the Town that if inaccuracies are found, the assessor has an obligation to correct them and to adjust the assessment when appropriate.

The Taxpayers testified there were several other factors or conditions that diminished the value of the Property. Some of these included the close proximity of a marina with its boat docks, trash dumpsters (which emit objectionable odors, especially during warm weather), and a large amount of vehicular traffic on both sides of the Property, both for owners of abutting properties as well as parking areas for owners of property on Pine Island (located slightly off shore from the Property). While the board finds some of these conditions may not allow the Taxpayers as much privacy as they may wish, it is common for waterfront properties in New Hampshire to be in close proximity to one another, with little or no buffers between them. Therefore, it is common for the noise, smells or lights from one property to affect abutting

properties.

The Taxpayers did not present any credible evidence of the Property's market value. To carry his burden, the Taxpayers should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). Therefore, because the Taxpayers did not make a showing of the Property's market value, the board must deny the appeal.

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

Douglas S. Ricard, Member

CERTIFICATION

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I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Paul F. Young, Taxpayer; and Chairman, Board of Selectmen of Meredith.

Date: June 22, 2001

Lisa M. Moquin, Temporary Clerk

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