

Leslie J. McGowan

v.

Town of Meredith

Docket Nos.: 19711-02PT and 20321-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2002 and 2003 assessments of \$573,800 (land \$173,300; buildings \$400,500) and \$630,600 (land \$215,300; buildings \$415,300) respectively, on a 33,857 square foot lot with a single-family home (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The parties stipulated that the levels of assessment were 0.901 for tax year 2002 and 0.921 for tax year 2003 as determined by the department of revenue administration.

The Taxpayer argued the assessments were excessive because:

- (1) the land was purchased in 1998 for \$95,000 and the home was constructed in 1999;
- (2) the Property is nearly identical to the neighboring “Rebsamen” property; Mr. Rebsamen used the Taxpayer’s construction plans to build his home which cost \$80,000 more to construct in 2000;
- (3) the Rebsamen lot is 1.06 acres, slightly larger than the Property’s 33,857 square-foot lot;
- (4) there is a twenty-foot wide sewer easement running through both Mr. Rebsamen’s lot and the Property;
- (5) the Property sits below grade and does not have the same desirability as the Rebsamen lot;
- (6) the Town’s comparable sales are superior properties and many have docks which the Property does not; and
- (7) a fair assessment for the Property for both tax years would be \$500,000.

The Town argued the assessments were proper because:

- (1) the Property is in a protected lakefront subdivision, known as “Grouse Point,” which was constructed in several phases;
- (2) some lower units in the valley have no view whereas the views are more expansive in the middle section of the subdivision where the Property is located;
- (3) the Rebsamen property has roughly comparable views and shares the sewer easement, but the dwelling was determined to be of average quality which the Town Assessor’s Agent/appraisal consultant (Mr. Corcoran) disagreed with;
- (4) to arrive at an estimate of the Property’s market value as of April 2002 and April 2003, an analysis was performed by Mr. Corcoran (“Corcoran Analysis”) of all sales that took place within the subdivision;

(5) Mr. Corcoran recommended the selectmen perform an update on the entire “Grouse Point” subdivision but they do not see the need for it;

(6) based on the comparable sales’ analysis, the Property has a market value of \$653,200 as of April 2002 and \$701,300 as of April 2003; and

(7) the assessments are supported by the market value findings.

At the conclusion of the August 11, 2005 hearing, the board left the record open for the Town to submit documentation regarding the Rebsamen abatement. Further, under its general authority in RSA 71-B:14, the board advised it would direct one of its review appraisers to do a limited report regarding the conflicting information of two lots used as comparables by the Town – 70 Hawk Ridge Road and 14 South Watch Road. Ms. Joan Gootee, the board’s Sr. Review Appraiser was directed to research the terms surrounding these two comparable sales. Ms. Gootee’s “Memo” was filed with the board on August 12, 2005 and copied to all parties. Subsequent to the filing of the Memo, the board further directed Ms. Gootee to conduct an inspection and perform an independent valuation of the Property. Ms. Gootee filed a summary appraisal report (“Report”) on November 21, 2005, which was copied to the parties who were given an opportunity (20 days) to submit comments to the Report. Mr. James Commerford, the Town’s Tax Assessor, responded by letter dated December 4, 2005. No comments were received from the Taxpayer.

Board’s Rulings

The board finds the market value of the Property for tax year 2002 to be \$625,000 and \$665,000 for tax year 2003. These indicated market values result in assessed values of \$563,125 and \$612,465 respectively.

Based on a review of all of the evidence submitted, the board concludes Ms. Gootee's Report to be the best indicator of value for the 2002 and 2003 tax years with some adjustments which will be explained below.

Several issues were raised in this hearing along with conflicting evidence, the first being the Rebsamen property. The Taxpayer argued the Rebsamen lot was slightly larger, had cost more to purchase and the home, with the exception of the size of the garage, was basically identical to the Property because the McGowan building plan was used to construct both properties. Based on these allegations, the board requested the Town to submit documentation of its abatement on Rebsamen's property. The Town submitted copies of 1) a marked-up assessment-record card; 2) a mortgage plot plan; 3) a direct sales comparison analysis ("comparable sales grid"); and 4) the 2002 disposition of application recommended by then Assessor Lena Bolton and approved by the selectmen. A review of the comparable sales grid for tax year 2003 indicated the same comparable sales were utilized as in the Property's analysis. The two grids, when compared, however, showed inconsistent application of view factors and, although the condition of both homes was listed as Avg+, the sales were adjusted by \$25 per square foot in the Rebsamen grid and by \$40 per square foot in the Property's grid. The Rebsamen grid indicated it had a 40 degree view and the Property's view was listed as 45 degrees. What was striking was the vast differences in the indications of views of the comparables. For example, the Rebsamen grid indicated a 90 degree view for 57 Hawk Ridge Road with an adjustment of \$100,000; the Property's grid indicated 57 Hawk Ridge Road had a 45 degree view, thus no adjustment to the Property. Likewise, Rebsamen's grid indicated 14 South Watch Road had a 100 degree view with an adjustment of \$120,000 and 11 South Watch Road had a 90 degree view with an adjustment of \$100,000. The Property's grid reflected 90 degrees for 14 South Watch Road and 45 degrees for 11 South Watch Road. It is noted that the

Town determined the view of the Property to be 45 degrees and the view of Rebsamen to be 40 degrees. The board finds such a difference to be nebulous at best and, given the conflicting and unsubstantiated adjustments, finds the sales analysis provided by the Town to be of little weight.

However, while the Taxpayer raises a legitimate question as to the Town's assessment methodology applied to the Property and the Rebsamen property, any errors that may exist in the methodology does not necessarily result in a disproportionate assessment for the Property under appeal (see cite and discussion of Porter v. Town of Sanbornton, 150 N.H. 363 (2003) in the following paragraph).

The Taxpayers have the burden to show the resulting assessment in total is disproportionate. The supreme court's ruling in Porter is instructive.

To carry the burden of proving disproportionality, the taxpayer must establish that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The plaintiffs produced no evidence regarding the fair market value of their properties. Rather, they attempted to prove disproportionate tax burdens by demonstrating that the town employed a flawed method.

...

We have long held that however erroneous, in law or in fact, the assessment may be, we will abate only so much of a taxpayer's tax as in equity the taxpayer ought not to pay. Edes v. Boardman, 58 N.H. 580, 586 (1879). This principle necessarily follows from the language of the statute that commands the abatement of a taxpayer's taxes as justice requires. *Id.* Justice requires that an order of abatement will not relieve the taxpayer from bearing his or her share of the common burden of taxation despite any error in the process of determining the amount of that share.

Id. at 368.

While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result.

Id.

Second, the Taxpayer did raise valid arguments which the board determined merited investigation. As stated previously, the board directed its review appraiser to perform an investigation of 70 Hawk Ridge Road and 14 South Watch Road sales. Ms. Gootee determined that 70 Hawk Ridge Road was sold in January 2002 for \$775,000. This sale was for the condominium unit only and the boat slip (number 14) was sold for \$50,000 under separate deed on the same date. Her Memo included copies of the recordings of these two deeds.

Further, Ms. Gootee's review of 14 South Watch Road showed that it sold, along with 12 South Watch Road and boat slip number 34, in December 2002 for \$1,130,000. The Town's assessment-record card referenced a verification of the sale of 14 South Watch Road at \$900,000; however, that information was not supported by the PA-34 signed by the buyer who indicated an overall sale for the property of \$1,085,000 without any allocation of value. The board finds this sale to be of little value based upon its conditions and lack of certifiable documentation.

Last, the board has reviewed Ms. Gootee's Report and, as stated previously, finds it is the best evidence of value of the Property with some revisions. The parties were given an opportunity to respond to the Report. The board generally concurs with Mr. Commerford's response to the Report. Ms. Gootee erred in making an adjustment to sale #1 (70 Hawk Ridge Road) for a dock because she had previously provided the board with documentation in her Memo that the dock had sold under separate deed. Next, the board agrees with Mr. Commerford that a 5 percent adjustment for age/condition is excessive and a more reasonable adjustment would be \$10,000. The board further agrees that the bathroom adjustment is also excessive. With respect to sale #4 (23 Grouse Hollow Road), the board gives this comparable little weight because of the uncertainty surrounding the sale.

In conclusion, the board concurs with Mr. Commerford's comments in his December 5, 2005 response to the Report and finds by applying the appropriate adjustments to Ms. Gootee's Report it indicates a market value of the Property for tax year 2002 to be \$625,000 and \$665,000 for tax year 2003. These market values, when applying the equalization ratios of 0.901 for 2002 and 0.921 for 2003, indicate assessed values of \$563,125 and \$612,465 respectively.

If the taxes have been paid, the amount paid on the value in excess of \$563,125 for tax year 2002 and \$612,465 for tax year 2003 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the 2003 ordered assessment for subsequent years. RSA 76:17-c, I and II.

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(f). 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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Margaret H. Nelson, Esq., Sulloway & Hollis, P.L.L.C., Post Office Box 1256, Concord, New Hampshire 03302, counsel for the Taxpayer; and Chairman, Town of Meredith, Board of Selectmen, 41 Main Street, Meredith, New Hampshire 03253.

Date: February 17, 2006

Anne M. Stelmach, Clerk