

**Marheim, Inc.**

**v.**

**Town of Harrisville**

**Docket No.: 20529-03PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessments of \$145,900 (land \$135,000; buildings \$10,900) on Map 51, Lot 37, a cabin on a 10 acre lot (“Lot 37”) and \$161,300 (land \$108,200; buildings \$53,100) on Map 51, Lot 43, a single family residence on a 0.970 acre lot (“Lot 43”) (or collectively, the “Property”). For the reasons stated below, the appeal for abatement is granted (but only to the amounts recommended by the Town, as described further below).

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties’ assessments were higher than the general level of assessment in the municipality. Id. Except for the minor abatements recommended by the Town and adopted by the board and described further below, we find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) the Property has remained in the same family for many years<sup>1</sup> and therefore, while it is “hard to say” if the assessments exceed the value of the Property, the assessments increased as a result of the Town’s 2003 revaluation on a percentage basis more than comparable properties;
- (2) a privately maintained road (Silver Road) bisects the Property which diminishes its utility and value in comparison to other properties that are not bisected;
- (3) the land valuation is “skewed” with overly high “adjustment” and “condition” factors at 250 and 200, respectively (Taxpayer Exhibit 2); and
- (4) substantial abatements -- to \$114,900 for Lot 37 and \$139,200 for Lot 43 (as calculated in “Chart #1” in Taxpayer Exhibit 2) -- are warranted.

The Town argued the assessments were proper (except for minor adjustments resulting in slightly lower assessments of \$143,100 on Lot 37 and \$160,600 on Lot 43) because:

- (1) detailed analyses of both lots (see Municipality Exhibits A and B) were prepared by the Town’s assessors, Avitar Associates of New England, Inc. (“Avitar”), after an inspection of the Property with one of the owners (Martin Hasz);
- (2) the Property was assessed with the same base rate, neighborhood code (“adjustment” factor) and “condition” factor as other similar waterfront properties on Tuttle Lane;
- (3) there is no market evidence the road factors mentioned by the Taxpayer diminish the value of the Property;
- (4) the sale of another waterfront property (Map 51, Lot 40) for \$170,000 on December 11, 2002 supports the proportionality of the assessments on the Property; and

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<sup>1</sup> The Property was acquired as a wedding present in 1935 by the parents in a family that eventually had eight children; these children inherited the Property from their parents, own it collectively (as shareholders in a corporation), share its use (as a “timeshare”) and split all expenses associated with it.

(5) no further abatement is warranted.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessments to be \$143,100 for Lot 37 and \$160,600 for Lot 43, as stated by the Town in its February 6, 2006 letter to the Taxpayer, and no further abatement is warranted for tax year 2003.

The board has considered the Taxpayer's arguments and the evidence submitted carefully. The Taxpayer does not dispute the building values but only the land values. Taxpayer Exhibit 1 consists of the assessment record cards of ten comparable properties and Taxpayer Exhibit 2 attempts to adjust the building values of two comparable sales (Lot 40 and Lot 41) upward in order to support lower residual land values. Lot 40 sold in December, 2002 for \$170,000 and Lot 41 sold in July, 2001 for \$185,000. The Taxpayer argued that while the (overall) assessed values for these two properties "seem to be very fair and both seem to be in line with their sale prices," the building values of both houses should be increased and the land values decreased. The Taxpayer uses these comparisons to argue the land adjustment and condition factors for the Property should be reduced from a composite of "5.0" ( $2.50 \times 2.0 = 5.0$ ) to a lower composite (3.5, 3.7 or 4.0) to decrease the overall assessments accordingly. (If the composite is changed to 3.5, for example, Lot 37's land assessment would decrease from \$135,000 to \$97,500 and Lot 43's land assessment would decrease from \$108,200 to \$75,740.) The board finds the Taxpayer failed to prove such adjustments are warranted.

Comparing percentage increases in assessments is a questionable and not necessarily reliable method of proving disproportionality. The fact property assessments may increase at different rates (percentages), sometimes quite dramatically, is not proof of disproportionality. See, generally, Appeal of Town of Sunapee, 126 N.H. 214 (1985). Unequal percentage increases

following a Town-wide revaluation are practically inevitable since not all property appreciates at the same rate.

The Taxpayer cited, for example, differential percentage changes in assessment increases for various properties between 1995 and 2003. This comparison presupposes that the 1995 assessments were reasonable and proportional, but there was no evidence submitted to allow the board to make such a conclusion for each property or, for that matter, that differential changes in the market values of such properties did not occur after 1995.

Market value is the touchstone for proportionate assessments and the Taxpayer did not present any direct evidence of the market value of the Property for tax year 2003, such as an appraisal. The board must consider the value of the Property as a whole, not simply the land value residual adjustment presented by the Taxpayer. The Taxpayer acknowledged it did not know the market value of the Property because it has been held in the family for a long time and is not for sale. (See supra note 1).

The board is aware some inconsistencies may have existed in the methodology used during the 2003 Town-wide revaluation. Concerns were raised by a number of taxpayers regarding the accuracy of the assessment methodology employed during the 2003 reassessment (performed by Nyberg, Purvis & Associates, Inc.) and the inconsistent application of land assessment models through the land adjustment factors and the neighborhood delineations. The nine 2003 Harrisville appeals filed for one tax year prompted the board under its RSA 71-B:16 authority to open a reassessment investigation (Docket No. 20668-05RA). In that docket, the board's senior review appraiser noted in her June 1, 2005 report problems with the assessment models, inconsistent or unclear handling of sales data and condition factors and inconsistent neighborhood delineations. These concerns led the Town to enter into a contract with Avitar

Associates of New England, Inc. to address prospectively those concerns. The board noted in an order dated August 15, 2005 that it would have ordered some reassessment remedy if the Town had not undertaken one on its own.

Nonetheless, despite the reassessment methodology concerns noted, they do not lead to a finding of disproportionality without probative evidence that the resulting total assessment is disproportionate to market value and the Town's level of assessment. The New Hampshire Supreme Court's ruling in Porter v. Town of Sanbornton, 150 N.H. 363 (2003) 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. at 369.

As noted above, the Town inspected the Property and has submitted detailed analyses and photographs (Municipality Exhibits A, B and C) to support the assessments and has proposed the minor abatements noted above. Further, the board finds that any effect of Silver Road being a

private road and bisecting the Property is inherently recognized in the “adjustment” or “condition” land factors as these factors were, based on the Town’s testimony, derived from the sales of Lot 40 and Lot 41 which are similarly accessed and bisected by Silver Road. Upon consideration of all of the evidence presented, the board finds the Taxpayer failed to prove that further abatements are warranted.

If the taxes have been paid, the amount paid on the value in excess of \$143,100 for Lot 37 and \$160,600 for Lot 43 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 properties pursuant to RSA 75:8, the Town shall use the ordered assessments 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

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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Marheim, Inc., c/o Martin J. Hasz, President, 47 Maple Shade Road, Middletown, CT 06457, Taxpayer; Gary J. Roberge and Lynn Cook, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representative; and Chairman, Board of Selectmen, Town of Harrisville, 705 Chesham Road, Harrisville, NH 03450-5529.

Date: 4/13/06

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Anne M. Stelmach, Clerk