

David E. and Rochelle G. Tooch

v.

Town of Barrington

Docket No.: 20934-04PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2004 abated assessment of \$383,160 (land \$237,560; building \$145,600) on Map 123/Lot 0006, a single-family home on a 0.28-acre waterfront lot on Mendums Pond (the “Property”). For the reasons stated below, the appeal for further 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, 138 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, even as abated by the Town, was excessive because:

(1) they purchased the Property in March, 2000 as an undeveloped lot for \$52,500, which was also its assessed value at that time;

- (2) even if an “aggressive” 20% per year appreciation factor is applied to this purchase price, the resulting land value should be approximately \$113,000, not \$237,560, and only the land value is at issue in this appeal;
- (3) neighboring land (owned by Mr. Taylor) of approximately the same size was professionally appraised for \$128,500 in August, 2004;
- (4) the Town had no basis for assigning higher base rates to this area of Mendums Pond than it did to properties on Swains Lake; and
- (5) a further abatement to \$300,000 for the Property (land \$131,670 and buildings \$168,330) is warranted.

The Town argued the abated assessment was proper because:

- (1) the level of assessment for tax year 2004 was 101.8 %, as measured by the median ratio;
- (2) the Property, while in a cove, looks across the lake to conservation land or current use land, rather than camps or developed lots, making it more desirable in the market;
- (3) there are significant differences between this area of Mendums Pond and other areas, including Mendums Landing and Swains Lake, and the base rate differences noted by the Taxpayers are justified;
- (4) the Town’s assessment is well-supported by the information contained in Municipality Exhibit No. A; and
- (5) the Taxpayers did not meet their burden of proof.

The board took a view of the Property and other properties located in the same Mendums Pond neighborhood, Mendums Landing and Swains Lake on February 7, 2007.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore denied.

The Town performed a Town-wide reassessment in 2004. The Town initially assessed the Property for \$453,390, but granted an abatement to \$383,160, which is the subject of this appeal. In support of this abated value and in response to the Taxpayers' arguments, the Town submitted, in Municipality Exhibit No. A, its reassessment manual, including information regarding how land values were arrived at in that revaluation year using a residual land value method, as well as other documents and photographs.

Because the purpose of a reassessment is to address and correct for prior inequalities and make adjustments for both absolute and relative changes in market values, comparisons to periods before the reassessment are inherently unreliable. Therefore, simply demonstrating what the Taxpayers believe are inordinate percentage increases from prior assessments does not prove disproportionality, especially since the board has no basis for determining whether the prior assessments were either correct (proportional) or not. As the board has consistently held: "the fact that 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 reassessment are practically inevitable since not all property appreciates at the same rate." Medbery v. City of Dover, BTLA Docket No. 19609-02 PT (December 23, 2004).

Nor is the purchase price of the land in March, 2000 probative of a disproportional assessment in tax year 2004. The Taxpayers testified they wanted to live on the waterfront (Mendums Pond). After initiating inquiries of their own and learning the prior owner was agreeable, the Taxpayers purchased the land, in an unimproved condition (no well or septic) for its assessed value through what appears to be a private sale. The board finds no basis for concluding the purchase price reflected what the market value of the land might have been had it been publicly marketed for a sufficient length of time, either through a real estate broker or after

a market appraisal had been performed to help the seller determine its market value. It is quite possible the seller was unaware of its true market value. At that time (tax year 2000), the level of assessment for the Town as a whole was 84%, indicating that market values were substantially higher than assessed values. Since this was essentially an average throughout the Town, it is possible the waterfront land was underassessed by an even greater margin at the time of sale.

It is also noteworthy that the Taxpayers needed to add basic improvements (well and septic) in order to construct their two-story house. There was evidence from the Town that land in an improved condition was valued much more highly than simply adding the estimated cost of the necessary improvements. (See January 31, 2005 letter from MaryAnne Moses to the Town Administrator, attached to Taxpayer Exhibit No. 1.) Taking these factors into account, the board finds it would be unreliable to place any weight on the purchase price in March, 2000, even after adjustments for appreciation and the cost of improvements, as a basis for challenging the 2004 assessment.

The board also could not give weight to the “Taylor” property appraisal relied upon by the Taxpayers as a basis for granting a further abatement. See “Land Appraisal Report” dated August 23, 2004, attached to Taxpayer Exhibit No. 1. This appraisal relies on only two comparable land sales, both on Swains Lake, which even this appraiser acknowledged is “an inferior body of water” compared to Mendums Pond, at least from a market value perspective. The value adjustment the appraiser made for this difference is only about 15% (\$30,000) which is unsupported and could be inadequate.

The third sale in the Taylor property appraisal is a developed lot with a house in Mendums Landing, which sold for \$443,900. The appraiser arbitrarily applied half of the sale price to the land value, with no explanation regarding the basis for doing so. It is quite possible the land component should have a higher percentage of total value attributed to it.

The appraiser also failed to make any time adjustment for appreciation and assumed the best metric of comparability is price per front foot. These diverged significantly, even for the two neighboring lots on Swains Lake (\$866 and \$1,080 per front foot—a 24 percent differential for properties with 277 and 219 feet of frontage, respectively), leading to further questions regarding the soundness of this approach.

The appraiser did not attend the hearing and was therefore unavailable to answer these or other questions, including the purpose of the appraisal on the Taylor property. The appraisal further noted that “a private well and a private sewage system will have to be installed” on the Taylor lot in order to develop it for a residential use. For all of these reasons, the board was unable to agree with the Taxpayers that this appraisal supports a claim of disproportionality.

While the relative lack of sales on Mendums Pond makes the assessing process more difficult, the Town did present a land residual sales analysis of four properties in the same neighborhood (code #15) as the Property (in Municipality Exhibit No. A, Tab 2B). The Town applied a modest ½ percent per month appreciation factor and calculated an average adjusted land value of \$259, 967 from these four sales, which supports its use of a \$250,000 base value for the Property and others in this neighborhood. This base value is supported even if one of the sales, which occurred five months after the assessment date, is excluded. The Town’s calculations appear to be reasonable, especially in light of the Taxpayers’ observation that a higher appreciation rate (20 percent per year – more than one percent per month higher than the ½ percent per month factor used by the Town) may be appropriate. The board further notes one of the remaining three sales used in the Town’s analysis was of the lot (Map 123, Lot 5) adjacent to the Property, which sold for \$347,500 in November, 2002 and yielded an adjusted land value of \$261,526 in the Town’s computations. Both this neighboring lot and the Property received a

5% (negative) cove adjustment, which demonstrates some consistency in the Town's assessment methodology.

The board has considered the Town's improved land values for Swains Lake and Mendums Landing (as shown in Municipality Exhibit No. A, Tab 3). The nub of the differences can be summarized as follows: the Town used a base land value for the Property on Mendums Pond (\$250,000) that is 25% higher than a lot on Swains Lake (\$200,000) and 6% higher than a lot in Mendums Landing (\$235,000). Based on the evidence presented, the board is unable to conclude these base value differences were disproportional for tax year 2004.

The Town presented plausible reasons why the market could value a property on Swains Lake less highly than one on Mendums Pond. See, generally, Municipality Exhibit No. A at Tab 4 (describing a number of the differences between these two bodies of water and their impact on market values). Among other things, Swains Lake is larger in size, is more developed and congested with houses, has less conservation land, and has more traffic (because of highway access and public roads). There was also testimony that public access to Swains Lake (for boating and other purposes) is more developed and recognized, leading to less privacy and diminished exclusivity (even after the recreational use of Mendums Pond by the University of New Hampshire is taken into account).

As for Mendums Landing, the covenants and restrictions on development and bigger lot sizes make this area quite distinct from the "McDaniel Shore" area where the Property is located. The Mendums Landing covenants include a mandatory 100 foot buffer from the water, an encumbrance not present on the Property, where the house is situated in much closer proximity to the water. The larger lot sizes in the Mendums Landing development may, of course, be attractive to some buyers, but further subdivision of each lot is prohibited. Thus, despite the larger lot sizes, each must be valued as only one house lot, just like the Property. The covenants

for Mendums Landing also prohibit the construction of private docks or the use of gasoline-powered (non-electric) boats. The board finds these factors alone could lead to somewhat lower land valuations for lots in this neighborhood compared to the area on Mendums Pond where the Property is located.

The Taxpayers misconceive the Town's basis for valuing waterfront property. The arithmetic shown on the assessment-record card is simply that: a computer extrapolation for a one-acre lot, not a market value determination, especially since there is no evidence that any waterfront lot in the Town sold for \$1 million or more. The market values a buildable lot (even if it is nonconforming under present land use regulations due to its small size and/or other factors) and places much less incremental value on excess land. Thus, while the market may indeed value 0.25 acres of improved waterfront land on Mendums Pond for a quarter million dollars, this does not suggest or imply an arithmetic extrapolation is proper and that a one acre lot would sell for \$1 million or more. To make this argument is to misunderstand the Town's valuation methodology and the land tables it has presented in Municipality Exhibit No. A.

Even if the Taxpayers could somehow demonstrate the Town could have used a more reliable methodology or that its methodology was flawed in some way, "the flawed methodology does not, in and of itself, prove the disproportionate result." Porter v. Town of Sanbornton, 150 N.H. 363, 369 (2003).

Finally, the board has noted the Taxpayers' comment that the Town overvalued the land component and undervalued the building component in the assessment process. There was no evidence presented by the Taxpayers regarding this issue or the market value of the Property as a whole. The board must consider the value of the Property as a whole, however, and not focus solely on the land value of the Property which the Taxpayers have emphasized in this appeal. If

their belief is correct that building assessments in the Town are generally lower than they should be, it becomes even harder to conclude the Property as a whole has been overassessed.

For all of these reasons, the board finds the Taxpayers failed to prove disproportionality and the appeal is therefore 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(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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David E. and Rochelle G. Tooch, P.O. Box 147, Durham, NH 03824, Taxpayers; Mary Anne Moses, Cross Country Appraisal Group, 210 N. State Street, Concord, NH 03301, Contracted Assessing Firm; and Town of Barrington, Chairman, Board of Selectmen, 41 Providence Lane, Barrington, NH 03825, Municipality.

Date: March 2, 2007

Anne M. Stelmach, Clerk