

Margaret A. Smith

v.

Town of Barrington

Docket No.: 21225-04PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 abated assessment of \$276,790 (land \$229,900; buildings \$46,890) on Map 125/Lot 0007, a single-family home on a 0.21-acre lot on Mendums Pond (the “Property”). For the reasons stated below, the appeal for further abatement is denied.

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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment, even as abated by the Town, was excessive because:

(1) she has owned the Property for over 45 years;

- (2) the assessment is too high when compared to the assessed value of the Property in the Town's last revaluation in 1996 (\$110,000) and a 10% per year appreciation factor is applied;
- (3) the market value of the Property is no more than \$199,000 when the comparable sales and other evidence are considered;
- (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) an abatement to \$199,000 is warranted.

(The Taxpayer was present for the hearing of another appeal from the same neighborhood on Mendums Pond (Tooch v. Town of Barrington, BTLA Docket No. 20934-04PT—the “Tooch appeal”), and the parties agreed the evidence presented by the taxpayers and the Town in that appeal would be incorporated and included in this appeal as well, avoiding the need to duplicate the presentation.)

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 between these neighborhoods are justified;
- (4) the Town's assessment is well-supported by the information contained in Municipality Exhibit No. A; and
- (5) the Taxpayer did not meet her burden of proof.

The board took a view of the Property and other properties 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 Taxpayer failed to meet her 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 \$320,890, but granted an abatement to \$276,790, which is the subject of this appeal. In support of this abated value and in response to the Taxpayer's 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 Taxpayer believes are inordinate percentage increases from prior assessments ("300%" since 1996) 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).

In Taxpayer Exhibit No. 1, the Taxpayer presented two sale listings showing larger homes with more acreage that are valued less than the Property. These sales listings are not probative of disproportionality, however, since neither involved a waterfront property. The Taxpayer may have a small lot (0.21 acres or approximately 10,000 square feet), but it is situated on Mendums Pond. There is no indication that either of the two sales had either water access or even a view of any body of water and, therefore, are not comparable to the Property. The Taxpayer's appeal document lists two other sales which sold for less than the assessed value of the Property, but these properties are located on Swains Lake, which the evidence indicated is a less valuable location than Mendums Pond.

The Taxpayer may not fully recognize the amount of appreciation that has occurred in waterfront properties and the differentiation in values that can occur between different locations and water bodies. She testified her family has owned the Property on Mendums Pond for over 45 years and that her children will not allow her to sell it.

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 $\frac{1}{2}$ 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. The board further notes one of the remaining three sales used in the Town's analysis was of Map 123, Lot 5 which is near the Property, sold for \$347,500 in November, 2002 and yielded an adjusted land value of \$261,526 in the Town's computations.

Both this other lot and the Property received a 5% (negative) cove adjustment, which demonstrates some consistency in the Town's assessment methodology.

In her abatement application to the Town (included as part of Municipality Exhibit No. B), the Taxpayer referenced a professional appraisal of the "Taylor" property "located two lots down from my lot," but the board could give no weight to this appraisal as a basis for granting a further abatement. (The Taxpayer did not submit a copy of this "Land Appraisal Report" dated August 23, 2004 in her appeal, but is attached to Taxpayer Exhibit No. 1 in the Tooch appeal referenced above.) 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 land value, with no explanation regarding the basis for doing so. It is quite possible that 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 Taxpayer that this appraisal supports a claim of disproportionality.

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, 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 and 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 Taxpayer misconceives 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 approximately ¼ acre of improved waterfront land on Mendums Pond for about a quarter million dollars, this does not suggest or imply an arithmetic extrapolation is proper and that a one acre lot would sell for over \$1 million. 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 Taxpayer 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 suggestion that the Town overvalued the land component and undervalued the building component in the assessment process. There was no evidence presented by the Taxpayer 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 Taxpayer emphasized in this appeal. If her 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 Taxpayer 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

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Margaret A. Smith, 4 Catherine Avenue, Wilmington, MA 01887, Taxpayer; 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