

**Rosalie Hanson**  
v.  
**Town of Meredith**  
**Docket No.: 22982-06PT**

**Teresa A. Cross Revocable Trust**  
v.  
**Town of Meredith**  
**Docket No.: 23000-06PT**

**Sally Braddock Boulanger 1997 Trust**  
v.  
**Town of Meredith**  
**Docket No.: 23005-06PT**

**Frederick and Maureen Taubert**  
v.  
**Town of Meredith**  
**Docket No.: 23065-06PT**

**Thomas and Anne McAllister**  
v.  
**Town of Meredith**  
**Docket No.: 23206-06PT**

**James H. Whittaker**  
v.  
**Town of Meredith**  
**Docket No.: 23312-06PT**

**CONSOLIDATED DECISION**

The “Taxpayer” in each of the above dockets filed a separate appeal, pursuant to RSA 76:16-a, of the tax year 2006 assessment of a boat slip at the Grouse Point Yacht Club by the “Town.” Each Taxpayer also owned, but did not appeal, a residential condominium in the

Grouse Point development which was assessed separately. Because of the commonality of issues and arguments presented, however, the board held a consolidated hearing on these six appeals and is issuing this Consolidated Decision applicable to each of them.

Shown below are the respective boat slip, condominium assessment and total assessment for each Taxpayer:

<u>Docket #</u>	<u>Taxpayer</u>	<u>Assessment of :</u>		<u>Total Assessment</u>
		<u>Boat Slip</u>	<u>Condominium</u>	
22982-06PT	Hanson	\$113,600	\$317,200	\$430,800
23000-06PT	Cross	\$100,000	\$822,500	\$922,500
23005-06PT	Boulanger <sup>1</sup>	\$139,100	\$994,800	\$1,133,900
23065-06PT	Taubert	\$136,400	\$1,117,500	\$1,253,900
23206-06PT	McAllister	\$100,000	\$620,000	\$720,000
23312-06PT	Whittaker	\$113,600	\$907,000	\$1,020,600

For the reasons stated below, each appeal for abatement is denied.

Each 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 Taxpayers must show the assessments on their properties were higher than the general level of assessment in the municipality. Id. We find the Taxpayer in each appeal failed to prove disproportionality.

The Taxpayers<sup>2</sup> argued each boat slip assessment was excessive because:

(1) Grouse Point is a gated community on Lake Winnepesaukee consisting of 82 residential condominiums where all streets, water supply and certain amenities (including a club house,

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<sup>1</sup> The Town indicated at the hearing the Boulanger condominium assessment had been abated at the municipal level (to \$994,800), with no change to the boat slip assessment.

<sup>2</sup> At the hearing, Bruce Hanson, the President of the Grouse Point Yacht Club, represented the Taxpayers in the Hanson, Cross, Taubert and Whittaker appeals, Robert C. Boulanger represented the Taxpayer in the Boulanger appeal and Thomas F. McAllister represented the Taxpayer in the McAllister appeal.

indoor pool, two tennis courts, 20 moorings, three boat slips and “7-day” docks) are collectively owned by the Grouse Point Community Association;

(2) there are also 32 separate boat slips/docks which are privately owned by individual condominium owners, including the six boat slips that are the subject of these appeals;

(3) the privately owned boat slips are restricted in the sense that they can only be sold to Grouse point residents, limiting the market for these slips to “only 30 out of 82 homeowners who do not have their own boat access to the lake at the Association property but have 7-day docks available for their usage” (as explained in Taxpayer Exhibit No. 1);

(4) the value of a boat slip depends on many factors, not just boat length, but also water depth, boat beam (width), protection from “wind and wakes,” whether “live on board” use is allowed, availability of 240-Volt power (for air conditioning), car parking and security at the dock, and whether the dock is covered and protected from the weather, but the Town disregarded these other factors in making the boat slip assessments;

(5) comparison to five comparable Town properties with boat slips (Properties A through E in Taxpayer Exhibit No. 1) demonstrate the Town has overassessed the Grouse Point boat slips;

(6) the boat slip sale prices at Grouse Point are not reliable indicators of value because some sellers allocate more value to them (from the condominium unit sold to the same buyer) in order to reduce the real estate sales commission they must pay to the real estate broker;

(7) “parity” is needed to recognize the above factors and should apply to how the Town makes its boat slip assessments; and

(8) the assessment of each boat slip should be abated, as explained in Taxpayer Exhibit No. 1, to no more than \$1,182 per lineal foot, resulting in an assessment “of approximately \$29,550 per slip” (for a 25 foot slip).

The Town argued the assessments were proper because:

- (1) the Town performed a revaluation in tax year 2006 which updated the values of the boat slips and the condominiums to reflect available market evidence;
- (2) the entire estate of each Taxpayer must be considered to determine the proportionality of the assessments, not just each boat slip in isolation;
- (3) the Town's assessing agent performed detailed analyses, which included an individual appraisal (designated as Municipality Exhibits A-a through A-f) for each Taxpayer's entire estate (condominium and boat slip), and residual sales, boat slip and paired sale/extraction analyses (detailed in Municipality Exhibits B and C), all of which support the proportionality of the assessments;
- (4) although the market for each boat slip may be limited to present and prospective owners of Grouse Point condominium units, the demand for boat slips was strong, as shown by the value differentials between units that sold with a slip and those that sold without one;
- (5) the five properties in Taxpayer Exhibit No. 1 are not valid comparables; and
- (6) each Taxpayer failed to meet the burden of proof required to obtain an abatement.

The parties agreed the level of assessment was 98.3% for tax year 2006, the median ratio computed by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds each Taxpayer failed to prove disproportionality. Each appeal is therefore denied for the reasons discussed below.

The board's findings are largely based upon two related foundational concepts:

- 1) in determining proportionality, a Taxpayer's entire estate within a taxing jurisdiction must be considered; and 2) taxable property must be assessed at its "highest and best use."

When taxpayers, as in these six appeals, own more than one taxable property, an abatement can only be granted if each taxpayer's entire estate within the taxing jurisdiction is shown to be disproportionately assessed even if that taxpayer elects to challenge only a part of the assessment. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 449, 102 A.2d 512, 516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the applicant." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899) (citations omitted).

In other words, even if a taxpayer wishes to question only one component of the assessment, such as the land value, building value, or, as in this case, the value of a boat slip that is a part of his or her taxable estate, the Taxpayer still has the burden of proving the aggregate value of the property as a whole ("in its entirety") is disproportional relative to the total assessment in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 355-56 (2007).

This principle is based on Part I, art. 12 of the New Hampshire Constitution which requires each person who is provided the protection of government to contribute his or her share in the expense of such protection. Further, to ensure that each person's share is proportional and reasonable (Part II, art. 5) relative to market value (RSA 75:1), the taxpayer's entire estate, not just a select portion of it, must be considered in determining whether these constitutional requirements have been met. In other words, to prevail in a tax abatement appeal, a taxpayer has the burden of proving by a preponderance of the evidence that he or she is paying more than his or her proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

In all six appeals, the part of each Taxpayer's property appealed range from 11% to 25% of the entire estate, clearly a minor portion of the Taxpayer's share of the total tax burden within

the Town. While the Taxpayers asserted the assessments on their residential condominiums were reasonable, they presented no evidence as to the market value of their entire estate. Instead, the Taxpayers simply claimed the boat slip assessments were inequitable to other boat slip assessments within the Town.

Not only are such arguments made in isolation of the Taxpayer's entire estate insufficient to carry their burden of proof, but the Town pointed out that the properties to which the Taxpayers compared their boat slips were not of the same nature as the boat slips owned by the Taxpayers. "Property A" in Taxpayer Exhibit No. 1 is a marina where all the boat slips are owned by one commercial taxpayer, Deep Water Marine Mgmt. Inc., and rented piecemeal to the public. The sticks in the bundle of taxable property rights of multiple boat slips owned by one entity in a marina are different than the separately owned and transmissible right of the Taxpayers' individual boat slips. Similarly, the boat slips of "Property C" were all assessed by the Town to the corporate owner of the property, Municipal Nautical Club, Inc., because all the boat slips were owned by the corporation with individuals obtaining distinct rights to certain slips by purchasing shares in the corporation. However, as the Town pointed out, the purchase of the shares and their value are not publicly recorded and, thus, the Town is unable to assess them separately as in the case of the Taxpayer's boat slips.

Both of these comparables highlight the economic principle in real estate that, in most instances, when value is computed based on common units of comparison, be they acres of land, square footage of living area or, in this instance, number of boat slips, value can be expected to be lower on a per unit basis if multiple units are owned. For example, an owner of 50 acres of land is likely to have a lower value and assessment per acre than one owning a single acre. Consequently, when property rights are fragmented, whether through subdivision of fee simple lots, the declaration of condominiums or the deeding of separate boat slips to individual owners,

such division increases the value on a per unit basis by permitting the sale of smaller units of ownership in real property. See RSA 21:21 (“I. The words “land,” “lands” or “real estate” shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.”

(Emphasis added.)) In other words, it is reasonable to expect the value of one boat slip to be higher than the average value of each of the 27 (Property A) or 68 (Property C) slips sold to a commercial buyer intending to hold them in the aggregate. Consequently, the board finds Property A and Property C relied on by the Taxpayers to support a lower assessment are not truly comparable and do not support their claims for abatement.

Further, Taxpayers’ comparable Property B is a boat slip not owned in conjunction with a residential property. While the slip may have a similar utility to a recreational user, it is not tied into a residential property and, thus, does not provide the synergy in the market as the Taxpayers’ boat slips by being used in conjunction to their residential condominiums in the same development.

It should be further noted that even if, for the sake of argument, the Taxpayers could show a difference between their own boat slip assessments and the assessments of other boat slips in the Town, the underassessment of others does not prove the over assessment of the properties owned by the Taxpayers. See Appeal of Cannata, 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value of each Taxpayer’s entire estate is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id.

The second concept in determining the Taxpayers’ proportionate tax burden is that all property must be valued at its highest and best use. See 590 Realty Co, Ltd. v. City of Keene, 122 N.H. 284, 285 (1982). In these appeals, the board finds the highest and best use of the appealed boat slips is to be owned and marketed in conjunction with residential property at

Grouse Point, - not sold separately from the residential property. The Town presented as part of Municipality Exhibit B an analysis by the residual method, paired sales extraction and analysis of “straight sales” within Grouse Point to determine whether the assessments on the appealed boat slips were reasonable. In particular, the sales utilized in the “residual method” indicate the market does recognize a significant premium for residential properties sold with boat slips compared to those sold without them at Grouse Point. This premium exists even though the buyers are presumed to know the limited number of potential buyers that might be available if they wish to resell the slip alone. The Taxpayers testified that condominium/deed restrictions require that if a boat slip was not sold in conjunction with the residential unit, the slip must be sold within six months only to other Grouse Point unit owners or the Grouse Point Association would market the property to ensure this occurred. While the Taxpayers argue this resale restriction impacts market value, the evidence presented fails to confirm this potential effect. There was no evidence presented to suggest the limited potential market (Grouse Point unit owners) has led to a surplus of available, unused boat slips or that the prices of the slips have fallen because of an excess supply of vacant or unused slips relative to the demand for them.

Moreover, the sales presented by the Town indicate the highest and best use is to consider the residential unit and boat slip as one estate because that is how they are likely to yield the greatest return. If an individual may sell the boat slip separately to the limited market of Grouse Point owners (if at some point the owner wants to retain the residential property but not the boat slip property), such sale to the limited number of market participants would not reflect the highest and best use of the boat slip and, thus, its separate sale price is not indicative of the boat slip’s contributory value to the entire estate.

Both the Town’s “residual method” and “paired sales/extraction” methods highlight this concept of the boat slips contributing more value when part of a transfer of a “package” sale

involving a residential property and a boat slip. In particular, the board places most weight on the paired sales/extraction analysis as it measures the difference between properties that sold without a boat slip that were very similar to one that sold with a boat slip. This analysis supports the Town's assessments and indicates the boat slips when sold in conjunction with a residential condominium contribute significantly more value than that argued by the Taxpayers.

While the board finds the Town's other two methods, the residual method and straight sales method, also support the assessed values, the board gives them less weight for a couple of reasons. First, the residual method appears to have utilized the actual assessed value of residential condominiums subtracted from an unadjusted for time sale price. The lack of time adjustment to the sale price and the utilizing of the actual assessment weakens the reliability of the conclusions but does not negate their probative value. The three straight sales shown by the Town were, as the Taxpayers testified, an allocation between residential condominium properties being purchased at the same time as the boat slips where the motivation may have been to reduce the real estate broker fee paid upon the residential condominium. Thus their reliability as an arm's-length indication of market value is questionable. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980) (the board has the discretion to evaluate and determine the credibility of whether the sale price is indicative of market value).

Most importantly, however, the Town focused on each one of the Taxpayer's entire estate and performed an appraisal summary report (Municipality Exhibit A-a through A-f) which utilized sales of comparable properties at Grouse Point that sold with a boat slip and made adjustments for the differences. The summary of that analysis contained in Municipality Exhibits B and C indicate reasonable correlation to the assessed value placed on each Taxpayer's entire estate. The board finds these appraisals to be competently done and are compelling

evidence to support the board's conclusion the Taxpayers failed to show the assessments of their entire estates were disproportionate to market value.

In summary, the board finds the Taxpayers failed to carry their burdens by focusing on only a relatively small portion of their entire estate and by presenting no market evidence of the highest and best use of the entire estate owned by each Taxpayer, which consists of a residential condominium unit and a designated boat slip. Each appeal is therefore denied.

As noted above, the board held a consolidated hearing on these appeals. Although the board is issuing a Consolidated Decision, the right of each party to follow the rehearing and appeal procedures summarized below on an individual basis is not affected by this consolidation procedure because each appeal was filed and processed separately.

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(g). 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 Consolidated Decision has this date been mailed, postage prepaid, to: Bruce Hanson, 3 Eagle Point Lane, Meredith, NH 03253, representative for Rosalie Hanson, Teresa A. Cross Revocable Trust, Frederick and Maureen Taubert and James H. Whittaker, Taxpayers; Robert C. Boulanger, 70 Hawk Ridge Road, Meredith, NH 03253, representative for Sally Braddock Boulanger 1997 Trust, Taxpayer; Thomas McAllister, 2 Eagle Point Lane, Meredith, NH 03253, Taxpayer; and Chairman, Board of Selectmen, Town of Meredith, 41 Main Street, Meredith, NH 03253.

Date: May 26, 2009

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Anne M. Stelmach, Clerk

**Frederick and Maureen Taubert**

**v.**

**Town of Meredith**

**Docket No.: 23065-06PT**

**ORDER**

The “Taxpayers” in this appeal, Frederick and Maureen Taubert, have filed a “Rehearing Motion” (“Motion”) questioning the board’s May 26, 2009 Consolidated Decision entered with respect to their appeal and five other appeals raising similar issues pertaining to the assessment of boat slips of condominium unit owners at the Grouse Point Yacht Club. The Taxpayers did not attend the hearing and their arguments were presented by another individual, Bruce Hanson, president of this yacht club.

The Motion is denied as it presents no sufficient showing that “the board overlooked or misapprehended the facts or the law...” in the Consolidated Decision. RSA 541:3; Tax 201.37(e). The Motion is largely a restatement of the Taxpayers’ arguments previously raised at hearing which the Consolidated Decision sufficiently addressed, including the issue of the value of each Taxpayers’ entire estate including their residential property (Consolidated Decision at pp. 9 – 10). See Appeal of Nashua, 138 N.H. 261, 263-64 (1994). Therefore, no rehearing or reconsideration is warranted.

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Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the Clerk's date shown below. RSA 541:6.

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 Order has this date been mailed, postage prepaid, to: Frederick and Maureen Taubert, 29 South Watch Road, Meredith, NH 03253, Taxpayers; Bruce Hanson, 3 Eagle Point Lane, Meredith, NH 03253, representative for the Taxpayers; and Chairman, Board of Selectmen, Town of Meredith, 41 Main Street, Meredith, NH 03253.

Date: July 2, 2009

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Melanie J. Ekstrom, Deputy Clerk