

**Joseph and Linda Kelly**

**v.**

**Town of Belmont**

**Docket No.: 23422-07PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 abated assessment of \$818,100 (land \$412,200; building \$405,900) on Map 111/Lot 54, 12 Rodin Road, a single family home on 1.33 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted, but only to the revised assessment recommended by the Town at the hearing.

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 beyond the revised assessment recommended by the Town.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in 1996 when it was a camp and the Taxpayers subsequently (in 2003) built a new house which they use as their year-round retirement home;
- (2) they dispute only the land value because the land is burdened by both a right-of-way and an underground sewer easement and is overassessed in comparison to two other neighboring waterfront properties (Lot 50 and Lot 52) for the reasons explained in Taxpayer Exhibit No. 1; and
- (3) a lowered land value of \$325,000 is “fair” and the total assessment on the Property should be abated to reflect this value.

The Town argued the assessment, except as adjusted below, was proper because:

- (1) the Town performed a revaluation in 2007 (and abated the assessment in May, 2008 from \$840,800 to \$818,100);
- (2) the sales data submitted by the Town shows the Town’s land values are well supported in the market, including the sale of Lot 52 in May, 2005 for \$450,000;
- (3) the Town inspected the Property in January, 2010 and reviewed the assessment, finding the land value was proportional and did not need to be changed, but reduced the building value from \$406,600 to \$391,200 (as shown by the notations on Municipality Exhibit A), reducing the total assessment to \$803,400; and
- (4) the assessment should be abated, but not below \$803,400.

The level of assessment in the Town was 100% in tax year 2007, the median ratio computed by the department of revenue administration.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$803,400 based on the Town's revised assessment of the Property (land \$412,200, buildings \$391,200) and the appeal is therefore granted.

The only disputed issue in this appeal is the value of the land. The Town has adjusted the building value, based on a January, 2010 inspection (reflected in Municipality Exhibit A), resulting in a lower assessment and an abatement on the Property, but concluded the land component of the assessment (\$412,200) is proportional. This appeal is based on the Taxpayers' contention that a land value of no more than \$325,000 is "fair" for the reasons presented in Taxpayer Exhibit No. 1. Upon review of all the evidence, the board finds the Taxpayers failed to meet their burden of proof on this issue.

The Taxpayers' primary contention that the land value should be no more than \$325,000 is based on their comparison to two neighboring waterfront properties (Lots 50 and 52) that are both slightly larger in size. While the board understands the Taxpayers' logic in comparing their land assessment to these neighboring properties, their argument ignores two related legal principles that are important in determining whether an assessment is proportional or not. First, relative proportionality between assessments is not the basis for determining whether proportionality exists or not; rather assessing properties relative to market value is the true test of proportionality. RSA 75:1; Appeal of Andrews, 136 N.H. 61 (1992) (the New Hampshire Constitution requires all taxpayers be assessed at the same proportion of market value rather than simply having similar properties assessed in a similar fashion.) Second, to carry their burden, the Taxpayers must show their entire estate, in this case land and buildings, is disproportionate, not just the land component of their estate. Appeal of Sunapee, 126 N.H. 214 (1985).

While the Taxpayers focus on their neighbors' two adjoining lots does not carry their burden, the board did review the assessments and the notations contained on the assessment-record cards to understand why the land assessments varied. The board finds the descriptions on the assessment-record cards and the Town's testimony as to the access issues of Lot 52 and the steep topography of Lot 50 provide some bases for understanding the difference in the assessed value of the land for the two nearby parcels. Further, while the Property is smaller in size than either Lot 50 or Lot 52 (1.3 acres for the Taxpayers and 2.4 acres and 1.77 acres for Lots 50 and 52 respectively), the Taxpayers' 1.3 acre site value reflects the land's contributory value (ability to build; access to water; view of water, better access to Fox Hill Road, etc.) to the Property's overall value where the Property includes a new, good quality house with a garage and a completely rebuilt boat house. The existence of the grandfathered boat house when the Taxpayers acquired the Property in 1996, which they renovated in 2001, preserved a grandfathered right that runs with the Property and is a factor that makes it more valuable than Lot 52, which does not have a boat house.

More importantly, however, as noted earlier, the true test of proportionality is market value. In this case, the Taxpayers provided no market value evidence and conceded they were "not versed in the methodology used by the appraiser...." (Taxpayer Exhibit No. 1, p. 2.) The Town did submit a copy of its "Winnisquam Waterfront" sales' analysis done during the 2007 reassessment which indicated, based on 10 Winnisquam waterfront sales, a one-acre base site value of \$450,000. The sale of Lot 52 was one of the 10 sales utilized in the Town's Winnisquam Waterfront analysis. Lot 52 sold with an existing ranch dwelling for \$450,000 in May of 2005. The Town performed a land residual analysis by subtracting an estimated depreciated cost of the improvements from the time trended sale price which resulted in an

approximate \$350,000 residual value attributable to the waterfront site and back land. However, the site of Lot 52, while slightly larger than the Taxpayers' lot, is inferior in that it is further removed from the access road, has less waterfront (in a cove area across from other lots) and does not have the grandfathered boat house right enjoyed by the Taxpayers. A review of the assessment-record-card for Lot 52 indicates the Town adjusted the land value for "access" (10%) and "shape" (5%), as shown in Municipality Exhibit B. Extrapolating these two differences, which the Town reasonably believed the market would recognize, produces a site value of over \$414,000, which is quite close to the Town's assessed site value (\$412,200) for the Property. In addition, the board concludes that the only market evidence submitted (the Town's Winnisquam Waterfront analysis and the sale of Lot 52 in May, 2005 for \$450,000) generally support the Town's revised assessment on the Property.

The Taxpayers did not present any arguments or evidence that the Town's depreciated value for the improvements, as revised on Municipality Exhibit A, was inaccurate. The description and photograph on the assessment-record card denotes a good quality one and three-quarter story cape with approximately 3,500 feet of living area and an attached garage. Further, the assessment-record card, the Taxpayers' brief testimony and the site plan (part of Taxpayer Exhibit No. 1) indicate the renovated boat house improvements, both the building and adjoining dock and reinforcing stone work, add a substantial contributory value to the Property's overall value.

In brief, the board finds the Taxpayers failed to carry their burden of presenting market evidence that the Town's assessment, as revised, is disproportionate. Further, the market value evidence submitted by the Town, once analyzed and adjusted for the differences between lots, supports the Town's revised assessment.

If the taxes have been paid, the amount paid on the value in excess of \$803,400 for tax year 2007 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 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(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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

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

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**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joseph and Linda Kelly, PO Box 143, Winnisquam, NH 03289, Taxpayers; Chairman, Board of Selectmen, Town of Belmont, PO Box 310, Belmont, NH 03220; and Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: February 10, 2010

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Anne M. Stelmach, Clerk