

Roland A. and Sheila P. Marinello

v.

Town of Meredith

Docket No.: 23468-07PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 abated assessment of \$307,200 (land \$135,000; building \$172,200) on Map U39/Lot 2/69, 58 Patrician Shores, a single family home with a detached boat slip on 0.23 acres (the “Property”). For the reasons stated below, the appeal for 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 was excessive because:

- (1) the house on the Property was built in 1969 by the father of Mr. Marinello who ‘won the raffle’ for one of the 45 boat slips at this development (see “Patrician Shores Boat Slip License Agreement” submitted by the Taxpayers, which gives them an “exclusive right” to have the slip for as long as they own a lot in Patrician Shores);
- (2) the Town performed a reassessment in tax year 2006 but the appraising company “had not taken the boat slips at Patrician Shores Association into account” at first and then corrected this error by assessing the Taxpayers’ boat slip at \$90,000;
- (3) the boat slip “is detached from the [P]roperty both physically and legally” and, while it adds some value, the Property is overassessed by \$60,000 because of the overvaluation of the boat slip;
- (4) the boat slip is only 23 feet in length and the Town assessed other larger boat slips in the Town (at the Bayshore Yacht Club, for example) for less;
- (5) the Town did not respond to the Taxpayers’ concerns regarding the assessment of the boat slip; and
- (6) as stated in Section F of the appeal document, the “fair and equitable” market value of the Property (including the boat slip) is \$251,900 and an abatement should therefore be granted.

The Town argued the assessment, as already abated, was proper because:

- (1) the Town’s assessor had many conversations with Mr. Marinello to explain the total assessment of the Property, including the boat slip, as well as granting the Property an abatement, and provided available information from the 2006 revaluation, including the sales comparison analysis included as Exhibit E of the Taxpayers’ submission to the board;

(2) this analysis is based on two sales of properties with boat slips in Patrician Shores and sales of properties in two comparable developments with boat slips (the “Winni[peaukee] Colony Club,” or “Winni,” and “Brookhurst,” the “Sands of Brookhurst”) and indicates the contributory value of the boat slip on the Property is approximately \$90,000;

(3) Patrician Shores, where the Property is located, has 86 lots with beach access but only 45 of the lots, including the Property, has a license to a boat slip (see Municipality Exhibit A, which includes photographs and other information) and the boat slip can be transferred with the Property, or sold separately to another lot owner in Patrician Shores;

(4) the Taxpayers admit they are unlikely to sell the boat slip separately from the rest of the Property and they also admit receiving an oral opinion from a broker of their own choosing that the Property had a value of \$349,000 with the boat slip, which supports the proportionality of the total assessment;

(5) the Town’s evidence of other sales of properties with boat slips in Patrician Shores and other developments (see the assessment record cards in Municipality Exhibit A) support the proportionality of the assessment; and

(6) the Taxpayers failed to present any market value evidence to meet their burden of proving the assessment, as already abated (\$307,200), was disproportional.

The parties agreed the level of assessment in tax year 2007 was 96.3%, the median ratio computed by the department of revenue administration.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionally assessed. The appeal is therefore denied for the reasons discussed below.

Assessments must be based on market value. See RSA 75:1. “In an abatement case, the taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town.” Appeal of Sokolow, 137 N.H. 642, 643 (1993). In other words, to succeed on a tax abatement claim, a taxpayer must demonstrate that the Property is bearing more than its proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

To carry this burden, some showing of the Property’s market value as of the assessment date is necessary. This value could then be compared to the Property’s assessment and the general level of assessment in the Town to determine if a tax abatement is warranted. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). Even if a taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, the Taxpayer still has the burden of proving the aggregate value of the property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007).

The only evidence of the value of the Property as a whole offered in this appeal is an oral estimate by a real estate broker contacted by the Taxpayers that this value was \$349,000. To succeed on their abatement claim, however, the Taxpayers needed to present evidence that the market value of the Property as of the assessment date was less than \$319,000 (\$307,200 divided by 96.3% agreed level of assessment), but they did not do so.

Instead, they presented a detailed packet of information and made arguments challenging the Town’s assessment of their boat slip at \$90,000, which they claimed was too high. The

Property, however, consists of land and a small house, as well as the boat slip, which adds contributory value to the Property as a whole.

These points were reinforced in very recent board decisions involving six boat slip assessments in the same Town (in the “Grouse Pointe” residential development). See Hanson, et al. v. Town of Meredith, BTLA Docket Nos. 22982-06PT, 23000-06PT, 23005-06PT, 23065-06PT, 23206-06PT and 23312-06PT (May 26, 2009). In the “Hanson” cases, each taxpayer argued the boat slip assessment made by the Town (ranging from \$100,000 to \$139,100) was excessive, based on comparisons to the assessments of other boat slips at other locations. As in Patrician Shores, where the Property is located, some of the lots in Grouse Pointe had boat slips and others did not and the taxpayers wanted to focus on the boat slip assessments only, rather than the proportionality of the assessment of each property as a whole. As the board specifically decided in Hanson:

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). . . .

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). . . .

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. . . .

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 . . . 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.... 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.

(Emphasis in original.) The board finds no basis for distinguishing the reasoning or the outcome in Hanson from this appeal on the central issue of whether the assessment of the boat slip can be isolated and considered separately from the assessment of the Property considered as a whole.

The Taxpayers further questioned the proportionality of the assessment by calculating the percentage increase over the assessment in tax year 2005, the year preceding a Town-wide reassessment, in the materials submitted with their appeal document. It is well established, however, that emphasizing the percentage increases from a prior assessment does not prove a property is disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214. Further, an abatement cannot be granted based on arguments that other properties may have been underassessed because, as noted above, the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. at 401.

A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The Town's reassessment in tax year 2006 was intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages. See, generally, In re: Town of Meredith Reassessment, BTLA Docket No. 19388-02RA (board ordered reassessment for tax year 2006).

Mr. Marinello also questioned the Town's assessment practices and its initial omission of an assessment of the boat slip. The Town corrected this mistake during the 2006 revaluation. Even if the Taxpayers could prove some defect or flaw in the Town's methodology, however, this would not be a proper basis for granting a tax abatement under the decided law of this state. See, Porter v. Town of Sanbornton, 150 N.H. 363. Justice requires that an order of abatement not relieve the Taxpayer from bearing his or her share of the common burden of taxation, notwithstanding any errors of law or fact pertaining to how the assessment was made. Id. at 368. For example, proving the municipality lacked a "sound methodology" when it made the assessment is not sufficient, unless there is proof of disproportionality. Id. at 367-68.

In fact, the board finds, based on the evidence presented, that the Taxpayers have not shown the Town's assessment methodology to be defective or flawed. The Town appears to recognize in its assessments that various waterfront related rights in various developments are bundled and marketed differently. This recognition is reflected in four approaches to arriving at a proportional assessment. Sales of properties with each type of bundle of rights need to be understood in order to estimate market values and thus the proper assessments. The Town generally assessed waterfront properties with direct, unshared access to the water and the right (either grandfathered or permitted) to have a dock with higher land assessments. Similarly, for developments where each and every lot has a boat slip (such as the Winnepesaukee Colony Club) the contributory value of the slip is embodied in the land assessment. A third type of property right (which the Taxpayers pointed to) involves situations where only a boat slip and amenities (not land or buildings) is being assessed (such as the Bayshore Yacht Club boat slip 'condominiums').

Each of the above three scenarios are different, however, from the bundle of rights which the Taxpayers own and are being assessed for, a fourth category and basis for assessment where some, but not all of the lots, have boat slip rights. The parties agreed the highest and best use (greatest return) would result from selling the Property as whole, not selling the house and lot separately from the boat slip. Thus, it was not improper for the Town to indicate a separate valuation of the boat slip on the Property's assessment-record card to recognize its contributory value to the Taxpayers' entire estate.

The sales provided by the Town in Municipality Exhibit A included Patrician Shores sales (three with boat slips and three without) support the reasonableness of the allocation of value to the boat slip (approximating \$90,000). This exhibit also contains sales information of properties with boat slips in other developments which reflect the Town's methodology explained at the hearing. Further, consideration of the Taxpayers' Attachment E (the Town's market extraction performed as part of the 2006 reassessment) shows the \$90,000 boat slip contributory value is reasonably supported, not only by Patrician Shores sales, but also sales at two similar developments (Winni and Brookhurst).

In summary, the only market evidence pertaining to the Taxpayers' entire estate, as well as the sales and testimony presented by the Town relating to the methodology used to extract the value of the boat slips from the market, support a finding that the Property is not disproportionately assessed. For all of these reasons, the appeal for abatement is 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(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

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Roland A. and Sheila P. Marinello, PO Box 1136, Sterling, MA 01564, Taxpayers; and Chairman, Board of Selectmen, Town of Meredith, 41 Main Street, Meredith, NH 03253.

Date: November 10, 2009

Anne M. Stelmach, Clerk