

**Julie P. Mayo Revocable Trust v. Town of Andover**  
**Docket No.: 24796-09PT**

**Lynda Rayner v. Town of Andover**  
**Docket No.: 24818-09PT**

**Mario and Caroline Ratzki v. Town of Andover**  
**Docket No.: 24819-09PT**

**Ralph and Constance Ressler v. Town of Andover**  
**Docket No.: 24821-09PT**

**DECISION**

The “Taxpayers” each appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessments of \$40,000 (land only) for their respective 1/5<sup>th</sup> undivided deeded ownership interest on Map 17/Lot 13, a 0.18 acre waterfront lot on Highland Lake (the “Waterfront Lot”) for a collective assessment of \$200,000. The Taxpayers also each own, but did not appeal, the following non-waterfront lots which are part of their taxable estates.

**#24796-09PT – Mayo** -- a 2.2 acre lot with a single family home (Map 16, Lot 900) assessed at \$408,800;

**#24818-09PT - Rayner** -- a 0.17 acre lot with a single family home (Map 16, Lot 892) assessed at \$202,200;

**#24819-09PT – Ratzki** -- a 53.34 acre lot with a single family home (Map 16, Lot 799) assessed at \$341,758; and

**#24821-09PT - Ressler** -- a 0.34 acre vacant lot (Map 16, Lot 887) assessed at \$6,100 and a 0.47 acre lot with a single family home (Map 16, Lot 898) assessed at \$122,800.

The Taxpayers have the burden of showing, by a preponderance of the evidence, their respective total assessments were 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). Each Taxpayer's total assessment consists of the 1/5<sup>th</sup> interest in the Waterfront Lot and other property owned, i.e., each house lot. No abatement is warranted unless each total assessment is higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

At the consolidated hearing held on April 24, 2012, the Taxpayers focused on the Waterfront Lot and argued the assessments were excessive because:

- (1) the Waterfront Lot is non-buildable and each individual 1/5<sup>th</sup> ownership interest cannot be sold separately from its respective improved lot without the consent of all five owners;
- (2) a neighboring, much larger waterfront lot (one acre in size) owned in common by four owners – the “Baker Beach Lot” – was assessed at \$211,100;
- (3) the Town increased the assessment on the Waterfront Lot from \$8,700 per 1/5<sup>th</sup> interest in 2008 to \$40,000 per 1/5<sup>th</sup> interest in 2009;
- (4) a review of the four Highland Lake sales used by the Town in the 2009 revaluation indicates the Waterfront Lot, based on a comparison of waterfront measurements (front foot), should not be assessed for more than a total of \$56,400; and
- (5) the assessments on the Waterfront Lot should be abated accordingly.

The Town argued the assessments on the Waterfront Lot were proper because:

- (1) the Town performed a revaluation in tax year 2009 and then lowered the assessments from \$46,700 per 1/5<sup>th</sup> interest to \$40,000 per 1/5<sup>th</sup> interest (collective assessment of \$233,500 reduced to \$200,000);
- (2) in developing its values, the Town reviewed all available information including sales of four waterfront lots on Highland Lake (see Municipality Exhibit D);
- (3) the purchase price of \$500,000 for the Ratzki property on July 17, 2009 (after extracting the value of the residential lot and improvements) corroborates the contributory value of approximately \$40,000 for a 1/5<sup>th</sup> interest on the Waterfront Lot;
- (4) the 2008 assessed value of \$8,700 per 1/5<sup>th</sup> interest on the Waterfront Lot was based on a prior revaluation in 2004 and was not indicative of its value in tax year 2009;
- (5) the Waterfront Lot has 50 feet of water frontage, a beach and docks;
- (6) even if questions are raised regarding the Town's methodology, the Taxpayers have not presented market value evidence to show each total assessment was disproportional; and
- (7) the Taxpayers did not meet their burden of proving disproportionality.

The parties agreed the level of assessment in the Town was 101.1%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to prove each of their total assessments was disproportional and the appeals are therefore denied.

To determine whether a tax abatement is warranted, the board considers and weighs all of the evidence presented, utilizing its "experience, technical competence and specialized knowledge." See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of

City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, in making market value findings, the board must determine for itself issues of credibility and the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994). The arguments and evidence presented by the Taxpayers, focusing only on the Waterfront Lot, do not satisfy their burdens of proving disproportionality for several reasons.

First, the Taxpayers argued the assessment of the Waterfront Lot increased as a result of the 2009 revaluation at a greater percentage than other similar properties. The board finds such evidence does not meet their burden of proving the Waterfront Lot was disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985).

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. Municipalities must examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The Town’s 2009 revaluation was intended to comply with RSA 75:8 and to remedy past inequities. Thus, the new assessments can be expected to vary between properties, both in absolute numbers and in percentages.

The board has reviewed the information including four waterfront sales on Highland Lake utilized in the 2009 revaluation (see Municipality Exhibit D) and finds consistency in the

Town's methodology. This is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). Consequently, the board could give no weight to the Taxpayers' arguments regarding differential percentage increases.

Second, the board could not give any weight to the Taxpayers' comparison of the aggregate assessment of the Waterfront Lot (\$200,000) to the assessment of the "Baker Beach Lot" as the basis for an abatement. (See Taxpayer Exhibit No. 1.) The Taxpayers argued the Baker Beach Lot, assessed at \$211,100 (including \$4,100 in extra features), was superior to the Waterfront Lot because it consisted of one acre with 160 feet of water frontage, had a screen house and a deck and was owned by four individuals. The Town assessed the Baker Beach Lot separately and as a whole, because the four individuals held ownership as "tenants in common," rather than with each having a separate deeded interest. (See Taxpayer Exhibit No. 2.) The Town did not assess any contributory value of the Baker Beach Lot to the separate properties owned by the four individuals, but rather determined its value as a separate lot that could be sold if the four owners all agreed to do so. Thus, the Baker Beach Lot assessment is not truly comparable to the Waterfront Lot, where each Taxpayer has a separate deeded interest that is part of each Taxpayer's entire estate and, because of deed restrictions, cannot be sold separately from each house lot.

Further, the Town did not stipulate to the proportionality of the assessed values of the improved, non-appealed portion of each Taxpayer's property. Therefore, the Taxpayers had the burden of showing how, if at all, each of their total assessments were disproportional (the house lot combined with the contributory value of 1/5<sup>th</sup> ownership interest in the Waterfront Lot). Assessments must be based on market value, adjusted by the level of assessment in the Town. See RSA 75:1; and e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). The

Taxpayers presented no appraisals or other direct evidence of market value of their respective entire estates, but merely argued the Waterfront Lot was overassessed. In deciding whether an assessment is proportional, the board looks at property values as a whole because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Even if the Taxpayers wish to challenge only one component of their assessments, such as the Waterfront Lot, each Taxpayer still has the burden of proving the aggregate value of their estate as a whole is disproportional and the total assessments are excessive in order to obtain abatements. Appeal of Walsh, 156 N.H. 347, 356 (2007).

For all of these reasons, the appeals are denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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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Michele E. LeBrun, Chair

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Julie P. Mayo Revocable Trust, Donald and Julie Mayo, 65 Maple Street, East Andover, NH 03231; Lynda Rayner, 21 Third Lane, East Andover, NH 03231; Mario and Caroline Ratzki, PO Box 213, East Andover, NH 03231; Ralph and Constance Ressler, PO Box 217, East Andover, NH 03231, Taxpayers; Chairman, Board of Selectmen, Town of Andover, PO Box 61, Andover, NH 03216; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 8/2/12

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Anne M. Stelmach, Clerk