

**Esther's Marina LLC**

**v.**

**City of Portsmouth**

**Docket No.: 26948-12PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2012 assessment of \$758,000 (land \$565,000; building \$193,000) on Map 0102/Lot 0025, 41 Pickering Avenue, a single family residence and a marina on 0.24 acres (the "Property"). For the reasons stated below, the appeal for 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. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer, represented by Esther Kennedy, argued the assessment was excessive because:

- (1) an appraisal performed by Bernice L. Bunker of Classic Appraisal Services (the "Bunker Appraisal" in Taxpayer Exhibit No. 1) estimates the market value of the Property was \$700,000 as of February 2, 2013;
- (2) an earlier market evaluation [(the "Burke Evaluation" submitted with the Taxpayer's 2010 tax abatement appeal (in BTLA Docket No. 25595-10PT; hereinafter the 2010 Appeal)] valued the Property at \$642,000 as of April 22, 2011; and
- (3) the assessment should be abated based on a market value of \$700,000.

The City, represented by Gary Roberge and Loren Martin of Avitar Associates of New England, Inc., argued the assessment was proper because:

- (1) the Bunker Appraisal errs in concluding the highest and best use of the Property was a "single family" residence rather than taking into account its commercial use as a marina with 36 permitted docks and a significant dock and kayak rental business;
- (2) the three comparable sales used in the Bunker Appraisal were not adjusted to properly take into account their differences with the Property, including its use as a marina with 36 permitted boat slips, and the location and other adjustments in the Bunker Appraisal are not credible (see Municipality Exhibit B);
- (3) Mr. Roberge's market analysis (the "Assessment Report" in Municipality Exhibit A) takes these factors into account and estimates the Property had a market value of \$820,000 "which not only supports the assessment of \$758,000, but indicates it may even be low"; and
- (4) the appeal should be denied.

The parties agreed the level of assessment was 97.4%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving disproportionality. The appeal is therefore denied.

The parties recognize assessments must be based on reasonable estimates of market value adjusted by the level of assessment in the City. (See the 2010 Appeal at pp. 2-3.) Therefore, in order to satisfy its burden, the Taxpayer needed to prove, by a preponderance of the evidence, the market value of the Property was substantially less than \$778,200 (\$758,000 assessed value divided by the 97.4% level of assessment) in tax year 2012. The Taxpayer relied primarily upon the Bunker Appraisal, which estimates a \$700,000 market value estimate in February, 2013 (almost one year past the April 1, 2012 date of assessment). [The board can place no weight on the Burke Evaluation for the reasons stated in the Decision (see p. 4) in the 2010 Appeal.]

In arriving at a proportional assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The board agrees with the City the Bunker Appraisal submitted by the Taxpayer does not consider a very significant aspect of the Property contributing to its market value and therefore is not credible as evidence of disproportionality. The Bunker Appraisal most notably omits the contributory value of the real estate associated with the marina operation and instead estimates only the market value of the “residential” portion of the Property.<sup>1</sup> The marina consists of 36 permitted docks (22 of which are currently rented, according to the Taxpayer) and the income from these docks generate

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<sup>1</sup> The Bunker Appraisal does make a nominal \$10,000 adjustment to those comparable sale properties that do not have any type of dock. While this adjustment may be adequate for one dock (for typical residential use), it does not adequately reflect the contributory value of a commercial marina that generates significant income.

sufficient revenue to at least pay the “property taxes and insurance” (with gross rental income of \$26,000 according to the Taxpayer’s testimony at the hearing).<sup>2</sup> These facts contradict the basic valuation premise in the Bunker Appraisal that the Property’s highest and best use is a “single family” residence<sup>3</sup> and that “[n]o other use is financially feasible, physically possible or legally permissible.” (See Bunker Appraisal, p. 1.)

Unlike the Bunker Appraisal, the market analysis prepared by Mr. Roberge (in Municipality Exhibit A) estimates an overall market value of the Property of \$820,000 by taking into account the contributory value of the marina. In his testimony, he noted Ms. Kennedy’s acknowledgement that income from the marina “pays for property taxes and insurance” on the Property.

Using only the estimated property tax obligation (\$13,300) as the basis for his estimate of the income generated by the marina (and not including any insurance costs), he calculated a \$123,800 capitalized value. He then reduced this estimate because he concluded “the added people traffic and dock use” would negatively impact the value of the residential portion of the Property to some degree. Therefore, he reduced the capitalized value of the real estate associated with the marina by \$75,000 and concluded it adds a net positive value of close to \$50,000 to the total market value of the Property.

The board finds Mr. Roberge’s methodology for estimating contributory value is, if anything, overly conservative (and therefore favorable to the Taxpayer). Even if the \$700,000 market value estimate in the Bunker Appraisal for the residence is accepted at face value, the

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<sup>2</sup> Ms. Kennedy testified the boat slips are leased “per season” for \$72 to \$100 per foot and the average boat size is 21 feet. This is evidence of a significant revenue stream.

<sup>3</sup> The “Site Comments” in the Addendum section of the Bunker Appraisal states: the Property has “frontage along 2 sides with dock & floats for boats ...”; and “the owner operates a kayak rental business from the property, however, no value was given in this report.”

board finds adding a somewhat higher, but still reasonable, estimate for the contributory value of the marina supports the proportionality of the assessment under appeal.

In fact, however, the board finds merit in the City's arguments and evidence showing the Bunker Appraisal underestimates the value of the Property even as a single-family residence. The board heard credible testimony from Mr. Roberge that all three comparables in the Bunker Appraisal required significant upward adjustments in their indicated values as documented in Municipality Exhibit B. Comparable No. 1 (32/33 Cape Road, New Castle) requires an upward adjustment for many reasons: it is a "split" house and shares a common wall with a neighboring property and did not have a dock at the time of sale; no permit application for a dock was filed until approximately six months after the May, 2012 sale date and the dock was not constructed until 2013. Comparable No. 2 (180 Walton Road, New Castle) also requires an upward adjustment because the location adjustment is too high and is inconsistent with Comparable No. 1; in addition, it is on a ledge with "steep topography, lack of developed bay front access and lack of boat dock." Comparable No. 3 (409 Dover Point Road, Dover) similarly requires an upward adjustment because it is in a less desirable location with significant differences in its waterfront and has a long river access to the ocean. In brief, correcting these inconsistencies results in a higher indicated market value range of \$662,600 to \$835,600 (instead of the \$622,600 to \$745,600 range in the Bunker Appraisal).

Consequently, the board finds the \$700,000 estimate in the Bunker Appraisal significantly understates the market value of the Property. It therefore does not satisfy the Taxpayer's burden of proving disproportionality.

The Taxpayer presented the assessment-record cards of four "commercial waterfront properties" located near the Property, but this limited information is not sufficient to carry the

Taxpayer's burden of proving the assessment on the Property was disproportional. The possibility that one or more commercial properties may be underassessed does not relieve the Taxpayer of the obligation to pay its fair share of taxes on the Property. See, e.g., Appeal of Cannata, 129 N.H. 399, 401 (1987). The Property, unlike these others, has a primary residential use (as reflected in the Bunker Appraisal) with an ancillary commercial use that contributes to its total value and was assessed on this basis.

For all of these reasons, the board finds the Taxpayer did not meet its burden of proving the Property was disproportionately assessed in tax year 2012. The appeal is therefore 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, 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: Esther's Marina, LLC, 41 Pickering Avenue, Portsmouth, NH 03801, Taxpayer; Chairman, Board of Assessors, City of Portsmouth, 1 Junkins Avenue, Portsmouth, NH 03801; and Gary Roberge and Loren Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 10/31/14

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Anne M. Stelmach, Clerk