MASSACHUSETTS
LAWYERS WEEKLY

Volume 47
Issue No. 6
February 5, 2018

Hearsay

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Carriage of justice

In more ways than one, Jeffrey Parker thought he was doing the right thing.

He had bought a Nantucket parcel, where he planned to build his dream house. To do so, he would need to raze two structures on the lot — a 3,500-square-foot main house and a smaller carriage house the size of a two-car garage with living quarters above, says his Framingham lawyer, Jon S. Barooshian.

BAROOSHIAN

Because building materials are so hard to come by on the island, local law requires owners to offer structures for sale before any demolition can take place.

A well-known local family came forward and agreed to fund the dismantling of the main house for "parts." Parker also found a taker for the carriage house, Housing Nantucket. The 501(c)(3) nonprofit organization wanted to haul the structure off Parker's property intact and then either place it on land it owns to use as rental property or resell it.

The donation caused Parker to endure some expense and inconvenience, Barooshian says, including having to clear some trees to allow a crane onto the property to carry the carriage house away.

But Parker was happy to endure it to boost Housing Nantucket's mission of addressing what it describes online as an "undeniable shortage" of housing for those wishing to live year-round on the island and work as teachers, plumbers or police officers — professions that place Nantucket home ownership all but out of reach.

To be sure, Parker also hoped and planned to realize a tax benefit from his donation. To that end, he got an appraisal of the carriage house and then used the appraiser's figure, $200,000, to claim a deduction. End of story, right?

Hardly.

After an audit, the IRS initially denied the deduction altogether, citing a lack of "donative intent." Barooshian says that he and Parker have come to understand that the majority — if not all — of those who made similar donations to Housing Nantucket similarly came under the IRS's microscope. Parker just had the means and the mind to challenge the determination.

As a compromise, an IRS auditor offered to allow Parker a $20,000 deduction but insisted on imposing a 40-percent penalty, according to Barooshian, who represented Parker with fellow Bowditch & Dewey partner Matthew A. Morris.

The sum of $20,000 is what Housing Nantucket had realized from the sale of the carriage house, but Barooshian points out that figure had little to do with the value of the structure. Rather, it was what Housing Nantucket deemed the buyer — a "young, 20-something" who drove around the island in "an old jalopy pickup truck" — could afford, Barooshian says.

"The representative of Housing Nantucket clearly articulated, 'The reason I got $20,000 was that was all he'd be able to pay, not because it's worth that,'" Barooshian says.

Barooshian adds that, "by all accounts," it would have cost around $400,000 to build the carriage house from scratch, accounting for the challenges of getting the building materials to the island and hiring the labor.

Barooshian acknowledges that the appraisal Parker received used an alternative methodology to "fair market value," something he says the tax code allows and is particularly appropriate in circumstances such as the one at hand.

The carriage house that sparked a battle between a Nantucket resident and the IRS

"It seems as though the IRS was stuck on the idea that [$200,000] is not fair market value," he says. "Our argument was there is no market, and there has to be another methodology to place a value on the donation."

Instead of accepting the compromise, Parker decided to take the battle to U.S. Tax Court.

After a "pretty long fight," IRS counsel conceded the issue of donative intent and agreed to waive the penalty, Barooshian reports. But Parker had to agree to a $100,000 valuation of the donation, half of the appraisal.

In one sense, that made the battle worth it. But Barooshian says his client is still upset with having to endure the time and expense of a legal fight after seemingly complying with the law.

Barooshian thinks it's worth sharing Parker's experience to dispel a widespread misconception: "Just because you give something to a 501(c)(3) charity does not mean you have the requisite donative intent to qualify for a charitable donation deduction."

Boston tax attorney Richard L. Jones says that donative intent is more frequently questioned in cases in which there is a reason to suspect some sort of quid pro quo, such as the donation of a parcel of land to a municipality in exchange for the granting of permits.

"That doesn't seem to be the case here," he says.

Jones also notes a line of cases in which taxpayers have donated a structure on their property to a local fire department, which it then burns to the ground in a training exercise. In those cases, the taxpayer more often than not has been found to lack donative intent because the expense of demolition that he has been spared is not outweighed by the value of the donation.

Patrick F. Gallagher, who handled the case on behalf of the IRS Office of Chief Counsel in Boston, did not return a call seeking comment.

— Kris Olson