

Debra M. Cote

v.

Town of Weare

Docket No.: 16387-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$124,700 (land \$28,900; buildings \$95,800) on a 2-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) another taxpayer in town has been given a total property tax abatement for life although she never applied for one; and

(2) the granting of this abatement is unconstitutional as it creates disproportionate assessments.

Page 2
Cote v. Town of Weare
Docket No.: 16387-95PT

The Town argued the assessment was proper because:

- (1) this abatement was granted on a one-time basis according to RSA 76:16 for "good cause shown";
- (2) the Town has not repeated the abatement due to a change in Town management and the advice of legal counsel; and
- (3) the Town was simply trying to reward a person for many years of dedicated service.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove she was disproportionately assessed. The Taxpayer's sole argument was that her constitutional rights had been violated because one taxpayer (Mrs. Wheldon) had been given a complete abatement of her taxes. As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985); Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). The Taxpayer presented no credible evidence of the Property's fair market value. To carry her burden, the Taxpayer should have made a showing of the Property's fair market value.

This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

While the Taxpayer did show that one taxpayer in the Town had been underassessed, the board finds that the Taxpayer's Property was not overassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to

Page 3
Cote v. Town of Weare
Docket No.: 16387-95PT

conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

Had the Taxpayer wished to appeal Mrs. Wheldon's assessment, she could have done so in accordance with RSA 71-B:16 I.

When a specific written complaint is filed with it, by a property owner, within 90 days of the date on which the last tax bill on the original warrant is sent by the collector of taxes of the taxing district, that a particular parcel of real estate or item of personal property not owned by him has been fraudulently, improperly, unequally or illegally assessed. ...

Upon receipt of a complaint filed under 71-B:16 I, the board would have noticed Mrs. Wheldon and the municipality that a complaint had been filed and

would allow both an opportunity to respond. The board would then have reviewed the complaint and the responses and scheduled a hearing. In this case the Taxpayer filed a 76:16-a appeal of her Property. Again, the Taxpayer presented no evidence to the board to support an abatement of her assessment.

Although the board did not find in favor of the Taxpayer, the board does wish to comment on the Town's total abatement of Mrs. Wheldon's taxes. While their motives may have been laudatory in wishing to reward Mrs. Wheldon for her many years of service to the Town, to reward Mrs. Wheldon by granting an abatement of her taxes was not in compliance with the statute. The Town should have found another avenue to reward Mrs. Wheldon. The Town indicated at the hearing that although Mrs. Wheldon was told that she would be provided an ongoing abatement of her taxes from 1995 forward, that upon seeking the advice of their attorney, the Town would not abate the taxes beyond 1995. The board reminds the Town of its RSA 71-B:16 II jurisdiction under which the board may review taxes assessed against a particular property when that property has been improperly or unequally assessed. See Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1981) (RSA 71-B:16 grants the board broad authority to remedy inequitable and improper taxation). Had the Town not represented

Page 4
Cote v. Town of Weare
Docket No.: 16387-95PT

this situation was corrected, the board would consider asserting its jurisdiction to investigate this matter. However, it appears the Town wished to compensate Mrs. Wheldon for her many years of service and chose the wrong vehicle to accomplish this. It is also clear that the Taxpayer's diligence, although through the wrong process, was instrumental in correcting this situation.

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(e). 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Debra M. Cote, Taxpayer; and Chairman, Selectmen of Weare.

Date: October 2, 1997

Valerie B. Lanigan, Clerk

0006