

Kevin and Gail Kenney

v.

Town of North Hampton

Docket No.: 17534-97PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$550,100 (land \$181,100; buildings \$369,000) on a 2.01-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is granted to the assessment of \$516,300 recommended by the Town at the hearing.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) their building costs in 1986-87, including the purchase of the lot and the

construction of the improvements, totaled just over \$400,000, significantly less than the current assessment;

(2) their assessment was higher than their neighbors because their neighbors' properties were not assessed at market value; and

(3) they are at a disadvantage because their house has not transferred recently making it difficult to accurately estimate its market value.

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The Town recommended reducing the assessment to \$516,300 to correct for the lack of attic finish and the number of bedrooms. The Town argued the revised assessment was proper because:

(1) the Town was revalued for 1997 using a consistent methodology including the grouping of properties by neighborhoods;

(2) the Property has been revisited and the assessment adjusted taking into account all factors that affect value; and

(3) a post revaluation review of the Town's assessments estimated the coefficient of dispersion (COD) to be less than ten, an indication that the Town is very equitably assessed.

Board's Rulings

Based on the evidence, the board finds the Town's recommended assessment of \$516,300 (\$181,100 land; \$335,200 buildings) is appropriate to recognize the lack of attic finish and the existence of only three bedrooms. The board finds the taxpayer failed to prove the revised assessment is in excess of market value and disproportionate.

In 1997, the Town of North Hampton conducted a complete reassessment. The department of revenue administration (DRA) determined the ratio for 1997

was 99% or that assessments in general were approximately only one percent under market value. The Taxpayers submitted no evidence to rebut the town-wide level of assessment. The Town's testimony and exhibit A generally supported that the level of assessment within the Town was approximately market value. Consequently, for the Taxpayers to carry this burden, they must show that the revised assessment exceeded market value not just that it was perhaps disproportionate to other select assessments. "[I]n order to achieve proportionality all taxpayers must be assessed at the same ratio, Appeal of Andrews, 136 N.H. 61, 64 (1992).

The Taxpayers also argued that their Property appeared to be overassessed compared to the assessment of other properties. First, the board finds the properties the Taxpayers chose were from less desirable

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locations, and thus, the land assessment and market value of the lots were lower. Further, even if these comparisons indicated some disparity in assessment, the underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to 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.

The Taxpayers also pointed to the assessments of three adjoining properties being significantly lower than their assessment. Based on the board's review of the comparable assessment-record cards and the Town's testimony regarding the improvements of those adjoining properties, the board concludes the Town's assessments differ for reasons that the market would recognize. For example, the property at 9 Bradley Lane was graded a lower quality of construction based on its craftsmanship and received additional depreciation for physical and functional reasons. Further, the taxpayer incorrectly referenced the assessment at 5 Bradley Lane at \$446,000 when it actually is \$543,500, very similar to the taxpayer's assessment.

The Taxpayers also noted that assessing their Property would not be difficult if it had sold in recent years but it has not. However, the comparable sales submitted by the Town (Municipality Exhibit A) in the same neighborhood as the Property show the revised assessment is consistent with the sales if the variations between the Properties are accounted for.

Lastly, the board finds the Taxpayers' concerns that the Town would be adjusting the Taxpayers' neighborhood and possibly not others is not well founded. The Town testified that it intended to do periodic assessment

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updates as the market indicated for both existing neighborhoods and as new subdivisions were created. Consequently, the board finds the Town's plans of reviewing sales and performing the updates is well planned and intended to maintain assessment equity for all areas of the Town.

If the taxes have been paid for the tax year 1997, the amount paid on the value in excess of \$516,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-

c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1998. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Kevin and Gail Kenney, Taxpayers; John W. McSorley, Department of Revenue Administration, Agent for the Town of North Hampton; and Chairman, Selectmen of North Hampton.

Date: March 11, 1999

Valerie B. Lanigan, Clerk

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