

Scott S. Wilkinson

v.

Town of Weare

Docket No.: 18231-99PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of \$149,400 (land \$50,700; buildings \$98,700) on a .3-acre lot with a single-family residence (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, 38 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Town, through its assessing department, has retaliated against the Taxpayer because the Taxpayer prevailed before the board in an earlier assessment appeal (1990);
- (2) the Town made several adjustments to the assessment that either do not accurately reflect the

Property or conflict with a previous board of tax and land appeals' decision in a 1990 appeal of the same Property's assessment. Some of these include: the condition factor on the land, the quality adjustment on the building, the depreciation allowance, the value of the fireplace and the effective area of the house; and

(3) revising the Town's numbers to accurately value the Property and to comport with the board's prior ruling would yield an appropriate assessment of \$133,237.

The Town argued the assessment was proper because:

(1) a town-wide valuation update of all properties was completed in 1999 and any changes in valuation were a result of the update rather than any one property being singled out or selected for review;

(2) the Town used the same standard, consistent methodology when updating the values of all properties;

(3) there is no relevant connection between the 1990 town-wide revaluation and the 1999 town-wide update, as the values determined in each case were based on different market data.

Changes from past assessments are not evidence in and of themselves that a taxpayer's property is disproportionately assessed; and

(4) the 1999 assessment of \$149,400 is reasonable, proportionate and equitable.

Board's Rulings

The board finds the Taxpayer did not carry his burden to show the Property was disproportionately assessed.

The Taxpayer asserted the Property had been singled out by the Town for a higher level of scrutiny than other properties due to the Taxpayer having prevailed in an earlier tax appeal

(1990). The board has carefully reviewed all the submissions by the parties and the testimony at the hearing and finds no evidence to support this assertion. The Town testified each property in the Town was assessed using consistent methodology and that no property was singled out for any higher level of scrutiny than another. The Town also testified it reviewed the assessments of all properties whose owners had requested an abatement or had an informal hearing to question their assessments. The assessing officials also stated they reviewed all the waterfront properties in the Taxpayer's neighborhood to ensure the consistency of waterfront adjustments. The Taxpayer contended the land condition factor applied to the Property was in conflict with the board's previous 1990 ruling. However, a review of Municipality Exhibit A and attachment 6 of that exhibit, indicates the Property has been treated in a similar fashion when compared to all the other properties in the Taxpayer's neighborhood with frontage on Lake Horace. The Town testified that of the 25 properties with water frontage in the subject's neighborhood, 11 had their land condition factor increased and none were decreased when compared to the 1990 assessments. The Town attributed this solely to research of market data and the town-wide update, rather than to any particular property's ownership.

Additionally, the Taxpayer questioned some of the increases to the building portion of the assessment. In particular, the Taxpayer questioned the increase in the assessment for a fireplace from \$1,500 to \$2,000 even though the fireplace is the same as it was during the previous revaluation. In response, the Town testified that all one-story fireplaces were increased from \$1,500 to 2,000 and all two-story fireplaces were increased from \$2,000 to \$2,500 throughout the Town. The board finds this to be consistent assessment methodology and appropriate given the Town's testimony that these increases were based on market data.

In addition to the previously mentioned changes, the Taxpayer questioned the motivation behind the change in the “quality adjustment” factor used by the Town as well as the effective floor area for the dwelling. The Town stated the Property was re-measured and inspected to make sure the data was the most accurate available and if there were differences between the information on the assessment-record cards for 1990 and 1999, either factually or assessment related, they were due to the reinspection of the Property and no other reason.

The board concurs with the Town that while the previous assessment may contain some factual data such as the size of the house that could be used in a subsequent reassessment or update, it is appropriate for the Town to reinspect and re-measure the Property and to provide the most accurate information available on the assessment-record card. The fact that the Taxpayer has not made any changes to the Property or that the Town changed some of the earlier data does not necessarily mean that the most recent update is using incorrect data. The Town has an obligation to change and correct any information that comes to their attention regarding properties and their assessments. Sirrell v. State of New Hampshire & a., No. 2001-003, __N.H.__, <http://www.state.nh.us/courts/supreme/opinions/0105/sirre087.htm> (May 3, 2001) (Pt. 2, art. 6 of the New Hampshire Constitution “requires . . . property be assessed at market value at least every five years.”); RSA 75:1 and RSA 75:8. The Town testified the Property’s assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The board finds the Town used appropriate assessing procedures in determining the Property’s assessment and the items pointed out by the Taxpayer are not sufficient to carry his

burden to prove the Property was disproportionately assessed. Therefore, the appeal is denied.

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

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 Scott S. Wilkinson, Taxpayer; and Chairman, Board of Selectmen of Weare.

Date: June 27, 2001

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Lisa M. Moquin, Temporary Clerk