

Andrew and Brenda Helfin

v.

Town of Tuftonboro

Docket No.: 18258-99PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$233,350 (land \$39,900; buildings \$193,450) on a 2.1-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the assessor incorrectly used the estimated construction cost for the decks, as originally designed, when he assessed them. When the Taxpayers applied for a building permit for the decks the estimated cost of the decks was calculated using the original blueprints. Because the decks were subsequently reduced in size, the actual construction costs were significantly lower than the original estimate;

(2) the assessor included an assessment for a bay window when none was present; and

(3) a covered porch, bar, sink, counter and cabinets were added to the assessment although they were not recent additions but were included in the original construction of the dwelling;

The Town revised the assessment and argued the revised assessment was proper because:

(1) the Taxpayers' decks are made of a unique material that is more expensive than a typical deck made from pressure-treated lumber;

(2) the addition to the assessment for some features not previously assessed was appropriate and necessary; and

(3) correcting the deck measurements, removing the bay window value and adding the previously missed items resulted in a revised assessment of \$230,950.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be the Town's revised figure of \$230,950 as shown on the Town's revised assessment-record card presented at the hearing (Taxpayer Exhibit 2).

The Taxpayers testified they purchased the Property in July 1998 for \$238,000. At the time of purchase, the house was unfinished and decks needed to be added to provide access.

Consequently, the Taxpayers applied for a building permit and estimated the cost of construction for the decks at \$12,000. They further testified the cost of the decks was initially estimated using the original house plans; however, after reducing the size of the decks, the actual construction cost amounted to \$5,600. A copy of the invoice from the contractor indicating this fee was provided by the Taxpayers. According to the Taxpayers, the decks are made of a unique material with the brand name "Trex."

The Taxpayers also questioned the Town's assessment increase of \$7,650 for the building even though no changes had been made to the structure.

The Town's assessing agent visited the Property after the appeal was filed, measured the decks and changed the assessment to reflect the reduction in their size. The Town testified the revised assessment also reflected the removal of the value for a previously assessed bay window which was not present, the addition of a second covered porch, and a bar sink with counter and cabinets which had not been previously assessed but were present at the time the Taxpayers purchased the Property.

Upon questioning, the Taxpayers testified the revised assessment of approximately \$231,000 reflected the Property's probable market value. The board finds this statement, coupled with the Town's 1999 equalization ratio of 100% and revised assessment, to be good evidence the Property is not disproportionately assessed. (Assessments must be based on market value. See RSA 75:1. The assessment on a specific property must be proportional to the general level of assessments in the municipality.) The Town's revisions reflected its obligation under RSA 75:8 to review assessments annually and make changes where appropriate. When the discrepancies between the information on the assessment-record card and the actual features of

the Property were pointed out to the assessor, the changes were mandatory not discretionary.

The board finds the Town's revised assessment to be the appropriate assessment.

Therefore, if the taxes have been paid, the amount paid on the value in excess of \$230,950 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 2000. 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Andrew and Brenda Helfin, Taxpayers; and Chairman, Board of Selectmen of Tuftonboro.

Date: April 26, 2001

Lynn M. Wheeler, Clerk