

William P. and Patricia A. Netishen

v.

Town of Nottingham

Docket No.: 18348-99PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the partial denial by the "Town" of their application for abatement of year 1999 taxes on the "Property," Lot 40 on Map 63 at 80 Barderry Lane in Nottingham, New Hampshire. The Property consists of a single-family home on 1.17 acres situated alongside Pawtuckaway Lake. The Property was originally assessed for \$249,000 in 1999, but the Town abated the assessment to \$246,200 (land \$153,300; buildings \$92,900) on June 19, 2000. For the reasons stated below, the appeal for further abatement is denied.

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, 138 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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued they were entitled to an abatement because:

- (1) the Town valued waterfront property at a higher price per acre than non-waterfront property;
- (2) the state lowers the water level on Pawtuckaway Lake by seven feet for the winter months (October through March) and, as a result, there is no water in front of the Property during this period (but only “dry” lake bed);
- (3) although the Town’s assessment-record card shows the Property as having 100 feet of water frontage, only 10 feet actually has access to the water unencumbered by rocks and shrubbery;
- (4) the Town’s rating tables for land favor owners with parcels larger than two acres by applying lower values to “excess” acreage;
- (5) on the Property’s assessment record card, the “condition” factor was unduly increased (to “4.25”) and the “neighborhood factor” (“1.30”) is also too high because access is by private road; this road is narrow (15 to 25 feet), is in relatively poor condition, has not been accepted by the Town and is not continuously maintained;
- (6) the addition of a garage by the Taxpayers increased the assessed value by \$8,467, an average of \$12.60 per square foot for 672 square feet, but two neighboring properties with similar garages show “0.45” per square foot on their assessment record cards; and
- (7) the Town was less than forthcoming in providing the Taxpayers with information about their assessment and one of the Town’s Selectmen is an employee of the Town’s contract assessor.

The Town argued its denial of the abatement was proper because:

- (1) all properties in the Town were revalued in 1999 to adjust assessed values for increases in

market value;

(2) the Town's specific rating factors and assessment practices questioned by the Taxpayers are proper and accurate, when interpreted properly;

(3) the Taxpayers' assessed value increased in 1999 for three principal reasons: the Town-wide revaluation; their acquisition of additional land; and their construction of a garage on the Property;

(4) the Town's equalization ratio in 1999 was 0.96, indicating an equalized value of \$256,458 ($\$246,200 \div .96$), a value for the Property the Taxpayers failed to refute with any admissible evidence; and

(5) the Taxpayers failed to sustain their burden of proving the Property was disproportionately assessed.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to sustain their burden of proof and the appeal is denied. In light of the detailed arguments by the Taxpayers concerning the Property and the Town's overall assessment practices presented at the hearing, the board will explain its reasoning and address the major issues raised by the Taxpayers in further detail below.

Valuation of Waterfront Property

The Taxpayers find fault with the Town for applying a higher base value because the Property has a waterfront location. As noted above, the Property is situated on Pawtuckaway Lake, which is a valuable amenity; barring unusual circumstances or countervailing evidence not presented here, waterfront property is almost invariably valued at a higher price by the market

than non-waterfront property with comparable attributes such as size and quality of construction. Since market values are the touchstone for assessed values, it is not improper for a town to assess waterfront properties at higher values because of their locational advantages. The Town's contract assessor testified to analyzing 121 sales during the course of the 1999 Town-wide revaluation, including 21 waterfront properties, in establishing assessed values for waterfront and non-waterfront properties and in establishing neighborhood value ratings.

While the water level of Pawtuckaway Lake may rise and fall on a seasonal basis, as the Taxpayers point out, the board notes this is also true of other lakes within the State and does not mean the Property, located on the lakefront, should be valued on the same basis as properties with no lake view or access amenities. In addition, the seasonal lowering of water levels on the lake is a factor that would affect all properties on the lake, not just the Property owned by the Taxpayers and, thus, the Pawtuckaway Lake sales utilized by the Town during the reassessment inherently reflect any market reaction to the seasonal draw down.

Comparative Assessments and Rating Factors

The Taxpayers also presented testimony and photographs of the waterfront area on the Property and several adjacent properties. The board has reviewed the submitted assessment record cards, including several other waterfront properties on the same street (Barderry Lane) as the Property, and notes the Town did make adjustments to the condition factor (in a range up to 4.75, compared to 4.25 for the Property) to take into account amenities like a shallow cove, the presence or absence of a "sandy beach," view and slope conditions. The board received credible testimony from the Town's representative regarding the appropriateness of several positive and negative adjustments made to the condition factor for the Property (from a base of 3.75 up to

4.25).

Even if, for the sake of argument, the Taxpayers could prove, which they have not, that any surrounding properties were underassessed, it is well established the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). The “fair share” of taxes each taxpayer is obligated to pay rests on the relationship between the assessed value and the market value of the Property and how it compares to the general level of assessment in the Town, not on whether one or more other properties may have been underassessed or overassessed by the Town. Id.

The Town used a base land value of \$27,755 per acre and then applied “neighborhood” and “condition” factors to arrive at an assessed value of \$153,300 for 1.17 acres of land. The Taxpayers argued the Town unfairly favored property owners with more land (for example, lots which exceed two acres in size) by applying a much lower rate of \$1,500 for ‘excess’ acreage on such properties. This argument ignores several relevant factors. First, the excess land may be off the lakefront, may lack road frontage and other amenities and may not be subdividable, all of which would support a lower value per acre. Second, as the Taxpayers conceded at the hearing, the market value of larger-sized parcels does not increase proportionately with size. Consequently, the board has no basis for finding the Town’s values applied to excess acreage make the assessment of the Property disproportional.

The Taxpayers argued the Property should be assessed at a lower value because access is relatively poor and the Town does not maintain the road, as noted above. The relative lack of municipal services, however, does not make an assessment disproportional because the basis of assessing property is market value. RSA 75:1. Any effect on value due to a lack of

municipal services would be reflected in the selling prices of comparable properties and their corresponding assessments. Cf. Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992) (taxpayers cannot obtain an abatement simply because they get reduced municipal services such as public education) and authorities cited therein. No evidence was presented in this case that the lack of better road access impacted adversely on the Property's market value in relation to its assessed value.¹

The Taxpayers complained the assessed value of their Property had increased inordinately between 1997 (\$123,700) and 1999 (\$249,000²), an increase of approximately 200%. Such increases, however, do not necessarily indicate the Property was disproportionately assessed in relation to other properties in the same taxing district in the same year. Cf. Appeal of Sunapee, 126 N.H. 214, 219 (1985) ("the settled law [is] that a town is obligated to assess all lots of land at

¹ Aside from describing the poor road conditions, the Taxpayers failed to present any evidence of comparable neighborhoods in the Town that may have had a neighborhood factor lower than the 1.30 factor which they contend is too high.

² Subsequently abated by the Town to \$246,200, as noted above.

the same percentage of fair market value”). If there are substantial increases in market value, assessed values would also rise substantially.³

The Town’s representative stated there was a Town-wide revaluation in 1999, the Property’s acreage increased because of an acquisition by the Taxpayers of adjacent land and the Taxpayers constructed a detached garage. These factors, among others, contributed to the substantial increase in the assessed value of the Property in 1999 and do not, on the evidence presented, furnish adequate grounds for an abatement.

Other Issues

³ Since property taxes are a product of the tax rate and the assessed value, however, tax obligations need not rise even if market values and assessed values increase. See International Association of Assessing Officers, Property Appraisal and Assessment Administration 14 - 16 (1990).

The Taxpayers questioned the value added by the Town for the 24' x 28' detached garage they constructed on the Property. The board finds the assessed value of \$7,620 to be reasonable in light of the size (672 square feet), which equates to \$11.33 per square foot. The Town's contract assessor noted the Taxpayers are mistaken in interpreting another assessment record card (Map 63, Lot 20): the Town did not use '45 cents' per square foot as a basis of value but rather applied a '45%' adjustment to the living space base rate, yielding \$21.21 per square foot, which compares quite favorably with the amount assessed by the Town for the Taxpayers' garage. The Taxpayers also admitted they added to the acreage of the Property by purchasing an additional 0.405 acres of land from an adjacent owner. The Town's contract assessor testified this acreage transfer occurred on October 16, 1999.⁴ The Town cannot be faulted for increasing the assessed value in 1999 because of this purchase and augmentation of the Property.

Although the Taxpayers ventured an opinion that the assessed value of the Property should be lowered substantially (to \$120,602), they presented no evidence of the Property's fair market value as of the April 1, 1999 assessment date. To carry their burden on this issue, the Taxpayers should have made a showing of the Property's market value. This value would then

⁴ At the hearing, the Town's contract assessor asserted the transfer occurred at a price of \$62,500, based on the public records pertaining to the deed. One of the Taxpayers, on the other hand, testified they paid \$32,000 plus half of the subdivision cost of \$1,200 (because the land was split with the neighboring owner). The board notes this apparent discrepancy in the testimony, but need not resolve it for purposes of this decision.

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); and Appeal of Town of Sunapee, supra at 217-18.

As a final matter, the board will briefly address the complaint by the Taxpayers that the Town was less than forthcoming in providing timely information about the Town's assessment practices. The Town was represented at the hearing by a private assessment company, Avitar Associates, rather than by an elected official⁵ or a Town employee, and its principal could not respond to the issue of whether or not the Town provided the Taxpayers with all the information they may have requested or whether the Taxpayers requested information from the Town with sufficient specificity.

Without deciding the relevant facts or ascribing blame on this matter, the board must note good communication between a municipality and its taxpayers/citizens is to be encouraged for several reasons, not the least of which is it may reduce the number and nature of disputes needing resolution by this tribunal or the superior court.⁶ Moreover, it is a hallmark of New Hampshire's "Right to Know" Law, RSA 91-A ("Access to Public Records"), that "[e]very

⁵ The Taxpayers raised the issue that one of the Town's selectmen, Brian Hathorn, was a Town selectman for five years and also served as chairman, while also being an employee of Avitar, the Town's contract assessor. In response to this objection, the Town's representative noted Mr. Hathorn's duties did not presently include working on assessments for the Town.

⁶ In this case, for example, Avitar had an analysis of 121 sales in the Town, including 21 waterfront sales, which were used in the 1999 Town revaluation. In the course of the hearing, Avitar explained this information and indicated it should also have been available at the Town office. The Taxpayers, however, apparently did not receive this information before the hearing.

citizen . . . has the right to inspect all public records,” RSA 91-A:4, I, including, of course, property tax assessment information. See Menge v. City of Manchester, 113 N.H. 533, 536-38 (1973).

In summary, while the Taxpayers presented a number of detailed issues pertaining to their assessment and the Town’s assessment practices, and expressed some degree of frustration with the Town and its officials regarding information needed to understand the basis of their assessment, the evidence presented was not sufficient to establish their entitlement to a further abatement. For these reasons, 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

Albert F. Shamash, Esq., Member

CERTIFICATION

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I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: William P. and Patricia A. Netishen, Taxpayers; Gary J. Roberge, Representative for the Town; and, Chairman, Selectmen of Nottingham.

Date: September 13, 2001

Lisa Moquin, Clerk

William P. and Patricia A. Netishen

v.

Town of Nottingham

Docket No.: 18348-99PT

ORDER

The board has reviewed the letter dated October 15, 2001 from the “Taxpayers” as a “rehearing motion” (the “Motion”) with respect to the Decision dated September 13, 2001. The Motion is denied under the standards articulated in RSA 541:3 and TAX 201.37.

The Motion fails to show “the [b]oard overlooked or misapprehended the facts or the law and such error affected the [b]oard’s decision.” TAX 201.37(d). The Motion presents issues already addressed in the Decision, such as the valuation of waterfront property and the lack of probative value of assessment increases, especially after a town-wide revaluation, see Decision at 3-8, and issues which are extraneous to the merits of the appeal, such as the Taxpayers’ inability to effect service by certified mail of a subpoena to compel attendance by the time of the hearing. See RSA 516:5 (Service of Summons: completed “by reading to him, or by giving to him in hand” and paying the requisite attendance fee). The Taxpayers did not request a

continuance of

the hearing because of this failure of service, but instead have tried without success to resuscitate the issue after the record was closed.

In addition, the board finds the "Town" adequately explained at the hearing the basis of the assessment and why certain adjustments were made, as well as addressing the Taxpayers' other points of contention. The board finds the Taxpayers' remaining arguments are without merit, making a rehearing unnecessary.

Any appeal of the Decision must be made within 30 days by petition to the supreme court. See RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: William P. and Patricia A. Netishen, Taxpayers; Gary J. Roberge, Representative for the Town; and Chairman, Selectmen of Nottingham.

Date: November 1, 2001

Lisa M. Moquin, Clerk