

Colin T. Egan

v.

Town of Allenstown

Docket No.: 18720-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$144,100 (land \$25,700; buildings \$118,400) on a 0.2380-acre lot with a single-family home (the “Property”).

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’s appeal should be dismissed, pursuant to RSA 74:17, II, for refusing to allow the Town access to the dwelling, or in the alternative, the appeal should be denied for failing to prove disproportionality.

The Taxpayer argued he was disproportionately assessed because:

- (1) an analysis of six sales in the Taxpayer's neighborhood and three sales utilized by the Town in its report ("Report") indicate a lower level of assessment of 78% should be applied to the Town's \$153,500 estimate of market value;
- (2) alternatively, applying the department of revenue administration's ("DRA") ratio of 91% to the Town's estimated market value of \$153,500 results in an indicated assessment of \$139,700 or approximately 3% lower than the Town's assessment of \$144,100; and
- (3) because the Town was denied a RSA 74:17, I administrative warrant to inspect the Property and because the appraised value of the Property is no longer an issue, the loss of appeal rights due to refusal to allow access to the dwelling as provided for in RSA 74:17, II, is not applicable.

The Town argued the assessment was proper because:

- (1) applying the DRA's ratio of 91% to the Report's estimated market value of \$153,500 results in an indicated assessment within 3% of the actual assessment of \$144,100;
- (2) the estimated appraised value is "reasonable" but not definitive because the Town "could not gain entry to verify the information." Report at 2; and
- (3) the board should take official notice of the 2000 ratio study performed by the DRA and give it more weight than the Taxpayer's calculations because it was based on a much larger and more representative sample of sales than the nine sales utilized by the Taxpayer.

Board's Rulings

During the hearing in this matter, the board raised *sua sponte* whether the Taxpayer had lost his right to appeal due to refusal to allow the Town access to the dwelling as provided for in RSA 74:17, II. The board will discuss that issue first and then, in the alternative, address the merits of the Taxpayer's appeal. As summarized earlier, the board finds the Taxpayer's refusal

to allow the Town access to the dwelling causes him to lose his right to appeal and, even if the case is decided on its merits, the Taxpayer failed in his burden of showing a different level of assessment than the one calculated by the DRA (91%).

Dismissal Pursuant to RSA 74:17, II

The Taxpayer's challenge of the Town's 2000 assessment has been a lengthy process, generating significant correspondence between the parties and resulting in several revisions to the assessment before the current assessment of \$144,100 was calculated. A short chronology of that process is helpful.

The Taxpayer, in filing his abatement application, questioned the amount of living area of the dwelling, the designation of finished area over the garage and the quality grade of the garage. Based upon an exterior inspection of the Property without the Taxpayer and a second inspection with the Taxpayer, at which time he provided access to the upper floor of the garage but denied access to the house, the Town made several revisions to the assessment-record card correcting the story height designation, living area square footage, grade of garage and house and removing the finished area over the garage. After the Town requested, but was denied, access to the dwelling to verify property data information in an attempt to resolve the abatement or perform an appraisal in defense of the assessment on appeal, the Town sought an administrative warrant to inspect the Property as provided for in RSA 74:17, I. A hearing on the administrative warrant request was held in Hooksett District Court on June 20, 2002, one day before the board's scheduled hearing on the merits of the case. Justice Robert L. LaPointe, Jr. issued an order on that date (Taxpayer Exhibit #1) denying the Town's request for administrative warrant. The denial was based upon the Taxpayer's representation that his appeal before the board of tax and

land appeals does not relate to the appraised value but only to the level of assessment being applied to his Property. The order notes the Taxpayer acknowledged that, by so stating, he would be estopped from arguing appraised value issues before the board and that the Taxpayer's refusal to allow the assessing officials access to the Property "may adversely affect his appeal should BTLA view said refusal as falling within the parameters of RSA 74:[sic]17, II . . ."

At the board's hearing, the Town did not raise the issue of dismissal under RSA 74:17, II, inasmuch as it believed its denial of an administrative warrant foreclosed the board from such consideration. The board, however, on its own, raised the issue as to whether it had jurisdiction given the loss of appeal provisions of RSA 74:17, II. Because "[t]he powers of the board and the rights of taxpayers appearing before the board are entirely statutory and are limited by the terms of the statute," Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985), the board only has jurisdiction to hear and decide the merits of the Taxpayer's appeal if he has not lost his right to appeal under RSA 74:17, II.

The board finds the Taxpayer's refusal to provide the Town access to the interior of the dwelling to verify its assessment data, and possibly, modify its assessment, falls under the provisions of RSA 74:17, II, and thus, the Taxpayer loses his right to appeal his assessment. The Taxpayer argued the provisions of this paragraph are limited to actions by assessing officials necessary to complete an inventory under RSA Chapter 74 or an appraisal under RSA 75:1, and thus, because the Taxpayer is only appealing the level of assessment and agreed to the Town's appraised value contained in the Report, the provisions of RSA 74:17, II, do not apply. We disagree with such a narrow reading of the statute.

Assessing officials have an initial obligation to properly assess all taxable real estate

(RSA 72:6 and 7; RSA 75:1 and 8) and an ongoing obligation to review and adjust assessments where “good cause” is shown when taxpayers file abatement requests and subsequently appeal (RSA 76:16, 16-a and 17). The process of creating proportionate assessments is akin to building a three-legged stool. If any one of the three legs of the process is not properly done, the resulting assessment is not proportionate. The first leg of the stool is to determine the taxable property rights and inventory those rights as provided for in RSA 72:6 and 7 (see also RSA 21:21) and RSA Chapter 74. The second leg of the stool is to properly appraise those taxable property rights as provided for in RSA Chapter 75. Specifically, RSA 75:8 (2000 Supp.) requires:

“[t]he assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall appraise all such real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal; and such corrected appraisal shall be made part of the inventory in such cities and town;”

The third leg of the stool is to equate the appraised value of a property to an assessed value by equalizing it to the general level of assessment of all other assessments within the town. Appeal of Nashua, 138 N.H. 261, 263, 266 (1994).

The Taxpayer argues the first two legs of the stool have been adequately crafted, and thus, only the third leg, determining the general level of assessment, remains. However, we find the Taxpayer’s acceptance of the Town’s appraised value (prepared in defense of its assessment) does not place the loss of appeal provisions of RSA 74:17, II out of reach in this case. The Town’s obligation to inventory property rights, appraise those property rights and reach a proper

assessment does not end if a taxpayer files an abatement request and a subsequent appeal. The Town's desire to view the interior of the house is a reasonable request to allow it to ascertain whether the property rights have been properly identified and appraised so that the appraised value can be properly equalized, providing an equitable assessment. During the hearing, the Town's contract appraiser, Mr. Wil Corcoran, stated that the appraised value in the Report was a reasonable estimate but was not definitive due to not having gained access to the interior of the house. The Report so states that "the interior data on the subject property is estimated for the appraisers could not gain entry to verify the information." While the Report goes on to say that based on knowledge of similar properties, the data appears to be reasonable, the Town did state at hearing that access to the interior would verify that conclusion. Further, the board notes that prompted by questions in the Taxpayer's abatement request, the Town made a number of adjustments to the dwelling's assessment, including the reduction of the grade of the house from a C+ to a C, without an interior inspection. The fact the Taxpayer is now satisfied with this and other adjustments should not preclude the Town from access to the Property to verify its data and appraised value in defense of an appeal.

Because New Hampshire tax abatement statutes are remedial in nature and are the exclusive remedy and any taxpayer seeking relief from an excessive assessment, the Town must have the ability to review the Property's physical listings (components, quality, condition and functionality) as part of its determination of whether the assessed value is accurate and proportional. Further, the Taxpayer does not run the risk of any increased liability for tax year 2000 due to changes of assessment-record card data that might result from an interior inspection by the Town because any increases to the assessment must be made before the end of the tax

year. (See RSA 76:14 and LSP Assoc. v. Town of Gilford, 142 N.H. 369, 374 (1997)).

The board also does not view the Town's denial of an administrative warrant under RSA 74:17, I from precluding the board from dismissing the appeal under paragraph II. The board sees paragraph I and II being distinct provisions for assessors to attempt to inspect property for inventory and appraisal purposes. Paragraph I provides the assessors with an optional process for gaining access (“ . . . may obtain an administrative inspection warrant . . .”) (emphasis added); however, the loss of appeal rights in Paragraph II if a person refuses to grant access is not incumbent upon assessors seeking an administrative inspection warrant. Paragraphs I and II were also enacted at different times (paragraph I was initially enacted in 1991 and paragraph II was added in 1993) with no change to paragraph I.¹

In summary, the board concludes the Town's request to view the interior of the Property in defense of its assessment falls under the provisions of RSA 74:17 and the appeal should be dismissed.

¹ The board notes that RSA 74:17 was enacted by the legislature subsequent to the court's ruling in 1989 in Appeal of Gillin, 132 N.H. 311 (1989) where the court found this board had no authority to dismiss a taxpayers' appeal because the taxpayer prohibited the assessor access to his property in preparing the assessment. RSA 74:17 appears to provide the statutory basis to address the “mischief” the court found did not exist at the time of Gillin.

Appeal Merits

Even if, for argument purposes, the loss of the appeal provision in RSA 74:17 is found to not apply in this case, the board finds the Taxpayer failed to carry his burden to prove that his assessment was disproportionate.

The board finds the best evidence of the Town's general level of assessment in 2000 to be 91% as determined by the DRA during its annual equalization process. As the Town requested during the hearing, the board takes official notice of the DRA's 2000 ratio study as part of its equalization process (copy of the applicable portion of study attached). As is the DRA's practice, it utilized sales that occurred in the Town six months before and six months after the assessment date of April 1, 2000. The ratio study included 119 sales the DRA determined were representative of market transactions. The Taxpayer, on the other hand, relied upon the analysis of only nine sales (generally from his residential neighborhood). These sales indicated a different (lower in this case) ratio than the town-wide ratio; however, that is not surprising given that it is a small sample of a single property type and is not representative of all property types in Town. For an assessment-to-sale ratio analysis to provide a meaningful indication of the town-wide level of assessment, it must be performed on a reasonably representative sample of sales within the entire taxing jurisdiction. See Snow v. Rochester, 119 N.H. 181 (1979). All taxpayers within a taxing jurisdiction must be assessed at the same ratio to achieve proportionality, and consequently, a ratio derived from a small subset of the taxing jurisdiction is not necessarily representative of the town-wide level of assessment. See Appeal of Andrews, 136 N.H. 61 (1992). Said another way, an assessment is proportional when it is at the same level of

assessment as all property within the entire tax base, not just similar properties. Bemis Bro. Bag Co. v. Claremont, 98 N.H. 446 (1954).

Additionally, the board finds no merit to the Taxpayer's argument that even applying the DRA's ratio of 91% to the Town's appraised value of \$153,500 indicates the Taxpayer is overassessed by 3%. As noted earlier, because the Town was unable to obtain access to the dwelling, the appraised value does not have as high a level of certainty as if access had been obtained. Further, there is never one exact, precise or perfect assessment; rather there is an acceptable range of values which represent a reasonable measure of one's tax burden. See Wise Shoe Company v. Town of Exeter, 119 N.H. 700, 702 (1979).

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Colin Egan, Taxpayer; Wil Corcoran, representative for the Town; and Chair, Selectmen of Allenstown.

Date: July 30, 2002

Anne M. Bourque, Deputy Clerk