

Allan E. Stone

v.

Town of Plaistow

Docket No.: 19564-02PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$176,200 (land \$71,300; buildings \$104,900) on a 0.280-acre lot with a single-family home, identified as Map 39, Lot 14 at 8 Whiton Place (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, 138 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 requested and was granted leave to not attend the hearing pursuant to TAX 202.06(d) because of health reasons. This decision is, therefore, based on the written submissions provided by the Taxpayer and the Town's testimony and evidence presented at the hearing.

The Taxpayer presented arguments in his written submittals that the assessment of his lot was excessive because:

- (1) the Property's land value was assessed too high in comparison to larger-sized lots in a nearby subdivision; and
- (2) large lots should have higher assessments than small lots.

The Town argued the assessment was proper because:

- (1) as a result of a building boom, roads through older residential areas have been extended to create new residential subdivisions;
- (2) these new developments require a minimum lot size of two acres whereas older residential lots were created prior to zoning and are often smaller;
- (3) the Town was revalued in 1999 and annual updates were performed in 2000 through 2002;
- (4) in determining base land values, the neighborhood where the Property is located is one of the largest in the Town;
- (5) Municipality Exhibit A, which includes three comparable sales, indicates the Property is not overassessed in terms of its overall market value (\$203,400) and the level of assessment in the Town (91%); and
- (6) the Town is planning an update in 2005 that will include revising the Town's neighborhoods and their base land values.

Board's Rulings

Based on the evidence, the board finds the Taxpayer is not disproportionately assessed and the appeal for abatement is denied.

Assessments must be based on market value. RSA 75:1. The Taxpayer freely admits in his January 31, 2005 letter to the board "as far as the fair market value is concerned, I will readily agree that my property (land and bldgs) is within market value" The Taxpayer does dispute, however, the Property's land assessment; to support his contention, he submitted photographs and the assessment-record cards of nine properties located not far from the Property. Each of the nine properties had substantially higher overall assessments, but, more important to the Taxpayer, each had a lower lot assessment while having significantly greater lot area. The Taxpayer wrote that this disparity shows a lack of fairness and should be corrected.

The Town submitted Municipality Exhibit A containing a market value analysis for the Property. The Town compared its market value estimate and the general level of assessment in the Town with the Property's assessment. This comparison supports the Town's position the Property is not disproportionately assessed.

The board finds the Taxpayer's admission of the Property's assessment relative to its market value coupled with the Town's market value analysis to be evidence the Property is not disproportionately assessed. Consequently, the board must deny the appeal for abatement.

Because the Taxpayer was granted leave to not attend the hearing and was not privy to the Town's testimony given at the hearing, the board will address the Taxpayer's underlying concern that fostered this appeal; that is, the disparate land assessment values placed on residential building lots in the Property's general vicinity.

The Town testified there have been several periods of development in the municipality beginning in the 1940's through the late 1970's. In the late 1980s another building boom took place and new subdivisions were created by extending the roadways through older, existing neighborhoods. To be approved, however, the new developments needed to meet the zoning ordinance in place at that time which mandated a two-acre minimum lot size. This created a situation where neighboring properties could have widely disparate lot sizes without having widely disparate lot assessments.

The Town noted the Taxpayer's arguments and stated the disparity was a concern to the Town that would be addressed in a 2005 update. The Town had previously done updates in 2000 and 2002, but none in 2003 and 2004. As part of the 2005 update, the Town will be reviewing the various neighborhoods. The Town agreed the assessing models for properties with small lots similar to the Taxpayer's should be revised to more accurately portray the contributory value of the lot within the overall assessment. The valuation of the home itself will also need to be revised to account for its increased contributory value compared to the lot value. The Town noted that a building lot is still just a building lot, and that when the Taxpayer's Property was subdivided and constructed, it probably met any zoning ordinance that may have been in place at the time just as the newer properties that are being developed meet the current zoning ordinance.

The board recognizes (and the Town acknowledges) that the allocation of the land and building values are not as reasonable as they should be for older homes on small lots; however, as noted earlier, the Taxpayer's overall assessment is proportional to market value. The Town's statement that it is going to review the neighborhoods in the Town during 2005 is an indication the Town will be properly fulfilling its RSA 85:8 annual assessment review responsibilities.

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(f). 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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Allan E. Stone, 8 Whiton Place, Plaistow, New Hampshire 03865, Taxpayer; and Chairman, Board of Selectmen, Town of Plaistow, 145 Main Street, Plaistow, New Hampshire 03865.

Date: March 28, 2005

Anne M. Stelmach, Deputy Clerk