

Burt and Virginia Wiggins

v.

Town of Unity

Docket No.: 19597-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 revised assessment of \$71,760 (land \$24,460; buildings \$47,300) on a 0.40-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, 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. The Taxpayers carried this burden.

The Taxpayers, represented by their son Larry Wiggins, argued the assessment was excessive because:

(1) as stated in Taxpayer Exhibit 1, the lot is extremely small (0.4 acres), ‘wet’ (50% of the land is wetland) and has no well (the Property shares a drilled well with an abutting property);

- (2) the land portion of the assessment increased 273% between the 1992 and 2002 revaluations;
- (3) the Town has incorrectly assigned the highest neighborhood land base rate value of \$35,000 to the Lear Hill neighborhood;
- (4) the Town ignored two sales on Lear Hill Road which support a lower land value for the Property: a January, 2002 sale of an improved property for \$160,000 (MacMahon, Parcel No. 9-A8-688); and a 2003 vacant land sale for \$15,000 (6 acres for \$15,000 or \$2,500 per acre);
- (5) no adjustment was made for a “junkyard” located on Lear Hill Road which diminishes property values; and
- (6) the market value of the Property was approximately \$54,216 as of the assessment date.

The Town argued the revised assessment was proper because:

- (1) the Lear Hill Road neighborhood deserved a land base rate value of \$35,000 based on two vacant land sales;
- (2) the “junkyard” is not immediately visible from the Property and does not adversely impact the value of all Lear Hill properties;
- (3) as shown on the revised assessment-record card included in Municipality Exhibit A, the land value was given two -10% adjustments to account for inadequate septic and a shared well;
- (4) the MacMahon sale on Lear Hill Road required too many deductions for the building improvements to make any residual land value indication reliable; and
- (5) the comparable sales in Municipality Exhibit A support the conclusion that the market value of the Property is greater than the assessed value.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$69,330.

The Taxpayers' representative submitted a packet (Taxpayer Exhibit 1) containing statistical data and observations to support a reduced assessment. The board finds the majority of the data submitted to be a critique of the 2002 town-wide revaluation and a comparison of it to the last full revaluation performed in 1992. Concerns regarding the 2002 town-wide revaluation have been addressed in a separate hearing and decision (BTLA Docket No. 19437-03RA). In Taxpayer Exhibit 1, the Taxpayers critique the assessed value of their Property using comparisons both in absolute dollars and percentages of the changes to their individual assessment as well as changes to assessments of many other properties in the Town. The board finds the Taxpayers general comparisons are not on point for this individual, property-specific tax appeal and do not prove the Taxpayers' Property was disproportionately assessed.

Increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to other properties in the taxing district in a given year. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a town-wide revaluation or update is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. The 2002 revaluation was intended to remedy past inequities just as the 1992 revaluation was intended to cure inequities that existed prior to it being performed. The 1992 revaluation, however, has no correlation to and was not the basis for the 2002 revaluation.

In Exhibit 1, the Taxpayers claim the Town used a land base rate value of \$75,500 per acre for the Property's improved home site. The Town testified the base rate for a one-acre improved lot on Lear Hill Road was \$35,000. In the instant case, the Taxpayers' lot size is 0.4 acres and a \$30,200 value was used as the assessment for the home site. The Town's contract assessor, Mr. Jeffrey Earls, testified the computer assisted mass appraisal ("CAMA") software

program used in the revaluation generates a number to go in the “base rate” field on the assessment-record card based solely on the area of the lot and the fractional unit value taken from the assessor’s land value schedule for lot sizes less than one acre. In this case, when the assessor entered 0.4 acres and \$30,200 in the appropriate fields in the computer program the CAMA system automatically divided the dollar amount by the land area to generate a hypothetical one-acre value for the sole purpose of having some information in the base rate field on the assessment-record card. Mr. Earls stated the \$75,500 value had no relevance to the lot’s actual assessment, it is merely a computer-generated “field filling” number. While the board understands how the \$75,500 number was computed, the board encourages the contract assessor to review and revise the software program to eliminate this misleading and confusing entry. The appraisal manual lists land values for Lear Hill Road lot sizes between 0.01 acres and 0.75 acres, all of which are less than \$35,000; as noted, the Taxpayers’ 0.4 acres is listed at \$30,200. The board finds this is some evidence the assessment of the land portion of the Property was determined consistently with other properties on Lear Hill Road.

Further, the Taxpayers argued the \$35,000 base rate land value for Lear Hill Road properties is too high and unsupported. The Taxpayers submitted the sale of the James MacMahon property (Lot 9-A8-688) in January 2002 for \$160,000 as evidence the \$35,000 base rate land value for the Lear Hill Road properties is not appropriate. The MacMahon property sold for substantially more than its assessed value.

In their analysis, the Taxpayers used the 1992 assessed value of the MacMahon property and discussed how it has changed in the 10-year interval between revaluations. As previously stated, it is inappropriate to compare the 2002 assessment to the 1992 assessment on either an absolute dollar value or on a percentage increase basis as there is no correlation between them.

The Town testified the \$35,000 base land value was determined using two sales in the Lear Hill Road neighborhood. Further, the Town stated it considered but did not use the MacMahon sale because it would have required a substantial number of deductions to remove the value of the improvements to derive an indication of the residual land value.

In further support of their assertion that neighborhood land values were too high, the Taxpayers stated there was a vacant land sale that occurred in 2003 where six acres sold for \$15,000 or \$2,500 per acre. In rebuttal, the Town stated the vacant land sale was unavailable to the Town during the revaluation as the transaction occurred after the period of time the Town had to gather and analyze sales for the reassessment. The Town testified it had not reviewed the sale to determine if it was an arm's-length transaction. Consequently, the board finds no conclusive market data has been provided to establish that the base land value applied to the Lear Hill neighborhood properties should be adjusted.

The Taxpayers' representative went on to state the Property's base land value should be adjusted by some factor to take into account the presence of a nearby property on Lear Hill Road that is being operated as a "junkyard." The Taxpayers, however, did not present any market evidence to support their contention that the nearby property adversely impacted the Property's market value. Further, the Taxpayers' representative stated the Property had an indirect view of the junkyard as it was not directly across the street.

Regarding the value of the improvements, the Taxpayers questioned the Town's application of building unit costs and disputed the Town's statement that as building areas increase, the unit costs decrease. The board finds the Town's statement to be an accurate

reflection of how typical assessing/appraising principles apply. Unit costs vary with size, all else being equal and unit costs decrease as building area increases.¹

At the hearing, the Taxpayers' representative testified the Property suffered from a wet basement on a year-round basis. The board finds the Property's "wet & damp bsmt" condition, noted by the Town on the assessment-record card, was not adequately accounted for in the assessment and the board has applied an additional -5% obsolescence factor to recognize this condition. Making this adjustment to the dwelling's assessment raises the obsolescence factor from 10% to 15%. This change reduces the value of the dwelling from \$43,590 to \$41,160. To this revised value must be added the \$3,710 contributory value of the detached garage yielding a total value for the improvements of \$44,870. When the \$24,460 land value is combined with the \$44,870 improvements value, the result is a revised assessment for the Property of \$69,330. This is the value the Town should apply as the Property's assessment for 2002.

Therefore, for the reasons stated, the board finds the only adjustment to the current assessment that is applicable is that for the wet basement and the Town shall use the revised value of \$69,330 as the Property's assessment.

If the taxes have been paid, the amount paid on the value in excess of \$69,330 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

¹ Appraisal Institute, The Appraisal of Real Estate, (12th ed. 2001 p. 371).

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

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: Larry Wiggins, 631 Lear Hill Road, Newport, New Hampshire 03773, representative for the Taxpayers; and Chairman, Board of Selectmen, Town of Unity - 13 Center Road #1, Charlestown, New Hampshire 03603-7500.

Date: March 9, 2005

Anne M. Stelmach, Deputy Clerk