

Larry and Lynne Wiggins

v.

Town of Unity

Docket No.: 19621-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$100,330 (land \$31,600; buildings \$68,730) on a 3.22-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 argued the assessment was excessive because:

- (1) the land value nearly doubled between the 1992 and 2002 revaluations;
- (2) the land base rate value for the home site should be \$25,000 rather than the \$35,000 the Town used for the Lear Hill Road neighborhood;

(3) a vacant land sale in a subdivision on Lear Hill Road that occurred in 2003 (6 acres for \$15,000 or \$2,500 per acre) casts further doubt on the Town's use of a higher land base rate value for this neighborhood;

(4) the Town inspected the Property after the informal review process and agreed the condition factor should be reduced to "Ave+" (Average Plus) from "Very Good" but this change was never made on the assessment-record card;

(5) the area of the second floor is listed incorrectly because it should be 194 square feet rather than 345; and

(6) the Property's market value is \$89,957 minus an adjustment for the change in grade for the "softwood floors."

The Town argued the assessment was proper because:

(1) the Property was assessed consistently with all other properties on Lear Hill Road;

(2) the comparable sales in Municipality Exhibit A support the conclusion that the market value of the Property is greater than the assessed value; and

(3) the second story of the dwelling was listed at "½" rather than some larger fraction to account for the lower than normal ceiling height.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$96,520.

At the hearing, the Taxpayers argued there were several reasons why the Property's assessment required further adjustment. Some of the reasons were specific to the Property, some, however, were general in nature and contained Town-wide issues comparing the recent 2002 revaluation to the 1992 revaluation. The Taxpayers' arguments relative to the two revaluations made ten years apart are not valid for several reasons. The Town-wide issues

concerning the 2002 revaluation were addressed in a separate decision based on a separate hearing (BTLA Docket No.: 19437-03RA). The board finds the comparisons between the two revaluations do not prove the 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). The 2002 revaluation was intended to remedy past inequities, just as the 1992 revaluation was intended to cure prior inequities. The 1992 revaluation, however, has no correlation to, and was not the basis for, the 2002 revaluation. For these reasons, the board gives no weight to the Taxpayers' arguments based on comparisons of the two revaluations.

Some of the Taxpayers' issues with the current assessment that were property-specific included the base land value for the home site, grade and condition factors applied to the dwelling and the misrepresentation of the true floor area of the second story. The board will address these issues individually.

First, the Taxpayers argued the base rate for the improved site of \$35,000 was too high and should be changed to \$25,000. To support their contention, the Taxpayers presented the 2002 sale of an improved property (the MacMahon sale) as well as a 2003 sale of vacant land, both on Lear Hill Road. The Taxpayers discussed the value of the components of the MacMahon property relative to the 1992 reassessment and the 2002 sale price. As previously discussed, the board finds this statistical comparison to be invalid in this property-specific appeal. The Town testified it set the home site land value for Lear Hill Road properties based on two sales. The Town stated it consistently applied this land base site value to all properties in that neighborhood. Reviewing the MacMahon sale, the Town reasoned the number of deductions and adjustments required to derive a residual land value from the sale would have

been so many and so large that the land value estimate would have been unreliable. The MacMahon property sold in January 2002 for \$160,000, substantially more than its assessed value.

As separate evidence that the neighborhood land values were too high, the Taxpayers mentioned the 2003 sale of a vacant tract of land on Lear Hill Road. The sale was of a six-acre lot that sold for \$15,000 or \$2,500 per acre. The Town responded by stating the sale occurred after the timeframe for sales to be considered for the setting of values for the revaluation and, therefore, was unavailable to the Town during its analysis. The Town has not reviewed this sale to determine if it was an arm's-length transaction. Consequently, the board finds it has not been provided any market evidence that the base site value for properties on Lear Hill Road should be something other than the \$35,000 value the Town has used.

The Taxpayers testified there is a "junkyard" on Lear Hill Road that affects the Property's market value. The board notes on the assessment-record card the Town recognized this factor and "adjusted land value for proximity to junkyard and topography." The Taxpayers, however, did not provide any data to support or quantify a different adjustment from that applied by the Town.

Second, the Taxpayers questioned the Town's methodology when it assigned the house an "average" grade and a "very good" condition factor. The Town explained the house, built in 1920, is of average quality construction for its age and that it is in very good condition to support the adjustments made to the dwelling's assessment. It is not unusual to have the grade of the dwelling different from its condition. The board notes on the assessment-record card the Town's indication that, at the time of the reassessment, the interior of the dwelling had been completely remodeled twelve years prior. The board finds this to be some support for the Town's condition

rating. The Taxpayers' comparisons to other properties in Town are not persuasive that the Property is misgraded. To give the Taxpayers' comparisons any weight, the board would have to assume all the other properties mentioned are accurately assessed. The board cannot make that assumption based solely on the information provided by the Taxpayers at the hearing.

Third, the Taxpayers questioned how the area of the second floor was calculated and valued. The Town responded that a cape style dwelling with a nearly full dormer on one side usually gets a greater than one-and-one-half story classification. However, due to the low posted nature of the dormer and its effect on the second floor living space, the Town called the dwelling a one-and-one-half story cape to recognize the construction features including the useful area of the second level. Additionally, the Town stated some of the 10% obsolescence depreciation factor applied to the house was for the "very low posted bsmt & ½ sty" noted on the assessment-record card. The board finds the Town's methodology to be a reasonable effort to describe and value the type of construction on the second level in its mass appraisal model.

After reviewing the assessment-record card in conjunction with the testimony given at the hearing, the board finds an additional adjustment should be made to reflect the wet and damp basement. The Taxpayers testified the basement was wet and damp with a "moat" around the perimeter that has water in it year-round. On the assessment-record card, the Town notes the Property's dwelling has a "wet and damp bsmt." The Town testified the 10% obsolescence depreciation factor shown on the assessment-record card was for the low posted nature of the second story and the basement, not for wetness. The board finds an additional 5% adjustment is appropriate for the "wet and damp bsmt" condition noted on the assessment-record card. Revising the obsolescence depreciation factor from 10% to 15% reduces the assessed value of the dwelling to \$64,920. This value has been added to the site value of \$31,600 to get the

revised assessment of \$96,520. This is the value the Town should use as the Property's 2002 assessment. The Town shall use the ordered assessment until it has reviewed the Property to see if any corrections or adjustments need to be made for future years.

The board noted, under the summary of improvements section of the assessment-record card, the dwelling is valued on one line and the attached garage is valued on the second line. The board observes the Town has applied a \$0 value to the attached garage without any explanation. The board does not know if this was a conscious decision or an assessment oversight. However, the board reminds the Town of its RSA 75:8 responsibilities to annually review assessments and to adjust those as necessary to accurately reflect the property being assessed.

If the taxes have been paid, the amount paid on the value in excess of \$96,520 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 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 and Lynne Wiggins, 631 Lear Hill Road, Newport, New Hampshire 03773, 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