

David and Dee Canavan

v.

Town of Plymouth

Docket No.: 19794-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$165,900 (land \$15,500; buildings \$150,400) on a 1.33-acre lot with a single-family home (the “Property”). For the reasons stated below, the appeal for 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 the assessment was excessive because:

(1) the Town revised the grade of the house, both in 2001 and 2002, without there being any substantive improvements or changes to the dwelling;

- (2) the 2002 increase in the grade from B- to a B occurred subsequent to the Taxpayers' December 2001 purchase of the Property and appeared to have occurred as a result of the sale;
- (3) in addition to increasing the grade of the dwelling, corrections to the paving size, porch area and bathroom grade occurred; additionally for tax year 2002, the assessment-record card inexplicably deleted the 30% basement finish area when nothing had changed;
- (4) the grade changes and other changes should not have occurred unless there was a Town-wide update or reassessment, as there was in 2004; and
- (5) the assessment should be returned to its 2001 level of \$129,900 prior to any of the grade changes that started in 2001.

The Town argued the assessment was proper because:

- (1) the increases in the grade factor from C to B- in 2001 and then to B in 2002 were done to correct an under grading of the dwelling that had occurred during the last reassessment in 1996;
- (2) the 2001 increase in the grade was part of the Town's cyclical review of a quarter of the Town each year to check and improve the physical data quality of the assessments;
- (3) the revision to the grade and the other changes that occurred in 2002 were the result of a review of the Property because it had sold in December 2001, which the Town routinely performs with all sold property to ensure physical data accuracy;
- (4) the Taxpayers' purchase of the Property in December 2001 for \$240,000 indicates the assessment of \$165,900, when equalized by the 2002 weighted mean ratio of 70.7%, is reasonable and, as a consequence, the Taxpayers have not paid more than their fair share of the tax burden; and
- (5) the other adjustments to the assessment-record card were either corrections or changes in the bathroom grade in keeping with the overall grade adjustment of the dwelling; to the extent there

are any inaccuracies or errors in the listing, they are not of such magnitude to result in disproportionality.

The parties agreed the 2002 weighted mean ratio of 70.7%, as determined by the department of revenue administration, is a reasonable indication of the general level of assessment within the Town for that year.

Board's Rulings

For the reasons that follow, the board finds the Taxpayers' assessment is not disproportionate and no abatement is warranted for tax year 2002. The board has thoroughly reviewed the extensive documentation submitted by the Taxpayers in support of their argument that the Town's actions of increasing the grade and other revisions are not appropriate assessment methodology and, as a result, their assessment should be reduced to its prior level. While understanding the Taxpayers' frustration in feeling that their Property was singled out for such revisions, the board finds that at least some of the Town's revisions were intended to correct for the fact the Property was underassessed due to being inconsistently (under) graded with other properties similar to it. This was indicated by the Taxpayers' three comparable properties (Conklin, Bunkley and Tucker) that were graded higher at C+ or B- rather than the Property's initial grade C rating.

Further, and more importantly, the burden of establishing disproportionality is not fulfilled simply by a showing of improper assessment methodology. Rather, the Taxpayers must establish that their "property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town." Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003) citing, Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). While certainly accuracy in assessing data and consistency in assessment methodology are goals to

strive for and go a long ways towards achieving proportionality, the fact that there may be some errors in the Taxpayers' 2002 assessment-record card does not, in and of itself, prove that the assessment is disproportionate. Again, as the court noted in Porter at 368:

We have long held that however erroneous, in law or in fact, the assessment may be, we will abate only so much of a taxpayer's tax as in equity the taxpayer ought not to pay. Edes v. Boardman, 58 N.H. 580, 586 (1879). This principle necessarily follows from the language of the statute that commands the abatement of a taxpayer's taxes as justice requires. Id. Justice requires that an order of abatement will not relieve the taxpayer from bearing his or her share of the common burden of taxation despite any error in the process of determining the amount of that share. Id.

and further at 369:

While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result.

Here, both parties testified the sale of the Taxpayers' Property in December of 2001 at \$240,000 is an indication of its market value. Further, the sale of a similar nearby property (the Bunkley comparable submitted by the Taxpayers) also sold in July of 2001 for a similar price of \$239,000. The parties also agreed the level of assessment within the Town was approximately 70.7%. Applying the ratio to the indicated market value of the sale price, \$240,000, results in an indicated assessed value of \$169,680 ($\$240,000 \times .707$), slightly more than the actual assessment of \$165,900 for tax year 2002. Thus, the board concludes the Taxpayers have not, by any alleged showing of any inaccuracy or inconsistent methodology, proved they are disproportionately assessed.

Last, as the parties are likely aware, following the Town's 2004 reassessment, 50 plus Plymouth taxpayers petitioned the board pursuant to RSA 71-B:16, IV questioning whether the 2004 reassessment was adequately performed and whether the board should order another

reassessment. This petition is docketed with the board as Docket No.: 20581-04RA and is being investigated by the board's RSA 71-B:14 review appraisers. Consequently, to the extent that any serious systemic methodology issues still exist in the Town's assessing practices, there is currently a review underway and, thus, there exists a potential remedy for such problems if they exist and are widespread and significant.

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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David and Dee Canavan, 19 Thurlow Street, Plymouth, New Hampshire 03264, Taxpayers; and Chairman, Board of Selectmen, Town of Plymouth, 6 Post Office Square, Plymouth, New Hampshire 03264.

Date: March 9, 2005

Anne M. Stelmach, Deputy Clerk