

Robert and Marsha Ramalho

v.

Town of Barnstead

Docket No.: 19810-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$186,400 (land \$48,200; buildings \$138,200) on a 3-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 Town underwent a complete revaluation in 2002 and the new average assessment (town-wide) increased 163% over the prior values, but the Property’s assessment went up 195%;

- (2) the Town's physical condition adjustments for age are inequitable when comparisons are made to the neighboring properties;
- (3) the Property's water quality adjustment factor should be -25%, similar to some neighboring properties, rather than -10% because the Property's river frontage is muddy, full of milfoil and is unsuitable for swimming;
- (4) the Property is situated in a flood plain and flood insurance at a substantial cost (well over \$2,000) would be required for mortgaging purposes, diminishing the Property's market value to any potential buyer;
- (5) the house was built on a "strict" budget, using low cost materials (concrete slab subfloor, vinyl siding, hollow masonite doors, etc.), and should therefore have a lower quality rating (90% or 100%) rather than 110%;
- (6) an abutting lot (Lot 36), relied upon by the Town and originally part of the Property, was subdivided by the Taxpayers and is not in the flood plain, as determined by the Town's Planning Board; and
- (7) the selling price on Lot 36 was set unusually high because the prior owner did not need to move and the buyers got caught in a "bidding war," causing them to overpay, which is why the Taxpayers did not use it as a comparable.

The Town argued the assessment was proper because:

- (1) the level of assessment in the Town for tax year 2002 was 91%;
- (2) prior to the revaluation performed for tax year 2002, the last revaluation was in 1986 and property values had changed considerably in the intervening period;

- (3) the Town takes condition as well as age into consideration when calculating depreciation and the “good” condition of the Kirby and Pethic comparables reduced their depreciation by 5% (from 27% to 22%);
- (4) the water quality adjustment factors for the Kirby and Pethic properties should also have been -10%, the same as the Property, and the Town will be making these changes; and
- (5) a third comparable, a neighboring house (Lot 36) sold for \$215,000 on June 26, 2003, further supporting the assessment.

Board’s Rulings

Based on the evidence, the board finds the assessment should be abated to \$173,800.

The Taxpayers made a number of arguments in support of an abatement. First, they argued the Property was disproportionately assessed because the assessment increased to 195% of its previous value compared to the town-wide average of 163%. A large assessment increase, either in actual value or in percentage, is not a ground for an abatement following a town-wide revaluation. Unequal percentage changes are inevitable following the revaluation process. Revaluations are implemented to remedy past inequities and adjustments will vary both in absolute numbers and in percentages from property to property. The Taxpayers’ argument that the Property is disproportionately assessed because of the greater percentage increase compared to the town-wide level for one year is not valid. See Appeal of Town of Sunapee, 126 N.H. 214 (1985).

The Taxpayers questioned the age depreciation schedule used by the Town during the revaluation. In particular, the Taxpayers argued two properties designated as Lot 6-031 and Lot 6-034 had inconsistent age depreciation adjustments applied. The Town, during its presentation, explained that all properties were treated consistently during the revaluation. In

particular, the Town outlined the methodology used to calculate age depreciation in Municipality Exhibit A. The Town applied an adjustment of 1% per year up to a 30% adjustment on all residential properties. Along with this calculation, an adjustment was made depending on whether the house was in average, good or some other condition. A house in good condition, for example, received a 5% lower age depreciation allowance. The two properties the Taxpayers used in their appeal document were adjusted using this methodology and the board finds no inconsistencies in the Town's application of the age depreciation schedule for the Property or the Taxpayers' comparables.

The Taxpayers also questioned the water quality adjustments made to the Property and the comparable properties previously mentioned. Both the Kirby (Lot 6-031) and Pethic (Lot 6-034) properties received a -25% water quality adjustment while the Property received a -10% adjustment. The Town responded by stating the comparable properties utilized by the Taxpayers should have had the same -10% adjustment applied to the Property and the Town will be making an adjustment to correct the comparable sales' water quality factor. The board finds the Town's review of the water quality adjustment factors for the Property and the comparables combined with the Town's stated intent to make appropriate corrections is an indication of the Town's attempt to comply with its RSA 75:8 obligations to annually review and adjust assessments as necessary. The underassessment of others (such as by application of an incorrect water quality adjustment factor) is not a ground for an abatement. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

In addition to the water quality adjustment, the Town provided a schedule showing the methodology and adjustment factors that were applied to properties with various amounts of water frontage. Upon questioning by the Taxpayers, the Town explained how the waterfront

value was calculated and the board finds the Town's explanation to be reasonable evidence the Town is attempting to consistently value waterfront properties using the same methodology for each property and applying the chart contained on p. 3 of Municipality Exhibit A.

The Town testified the sale of an abutting property (Lot 36) that sold for \$215,000 on June 6, 2002, shortly after the effective date of the revaluation was evidence the Property was not disproportionately assessed. The Town stated this property was comparable to the Property. In rebuttal, the Taxpayers testified the sale of the abutting property was not a valid indication of the Property's market value for two reasons: 1) the Property is located in a flood plain while the abutting property is not; and 2) the selling price of the abutting property was determined after a bidding war between several buyers, thereby inflating the selling price. The board finds there are sufficient questions concerning the sale of the abutting property and its comparability to the Property that the board did not find the abutting property's sale price to be supporting evidence for the Property's assessment.

During the hearing, the Taxpayers testified to the reasoning behind the construction methodology used on the Property. Because the Property is located in the 100-year flood plain, it was unable to have the full basement typical in most housing. The Taxpayers were required to have the grade of the lowest floor one foot above the 100-year flood plain elevation. In order to construct the improvements on the Property, it was necessary for the Taxpayers to construct the dwelling on a concrete slab at grade. Further, this concrete slab became the sub floor for the various flooring components in the house. The Taxpayers stated the house was built on a very strict budget, using average quality materials, including hollow masonite doors; finger-jointed, paint grade, interior trim; and economy oak kitchen cabinets with standard countertops. For

these reasons the Taxpayers testified the quality rating of the house should not be 1.10 as graded by the Town but rather 0.90 or 1.0 to more accurately reflect its average quality.

In response, the Town stated it considered curb appeal as well as the overall condition as a factor when determining quality grades of houses. The Town testified the Taxpayers' house is a well maintained property and for this reason, it was assigned the 1.10 quality adjustment factor.

The board finds given the totality of the evidence, including the fact one Taxpayer is an experienced millwork salesman familiar with the grading of construction materials and the fact the Property was built on a concrete slab with average quality material, the Taxpayers met their burden of establishing the house should have been assessed as an average quality home. For these reasons, the board has assigned a quality level of 1.0. Making this adjustment on the assessment-record card reduces the assessed value of the building to \$125,600 (rounded). Combining this value with the land component of the assessment of \$48,200 yields a total assessment of \$173,800 for tax year 2002.

If the taxes have been paid, the amount paid on the value in excess of \$173,800 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: Robert and Marsha Ramalho, Post Office Box 72, Barnstead, New Hampshire 03218, Taxpayers; and Chairman, Board of Selectmen of Barnstead, Post Office Box 11 – 108 South Barnstead Road, Center Barnstead, New Hampshire 03225.

Date: September 14, 2004

Anne M. Stelmach, Deputy Clerk