

Barbara Barney

v.

Town of Wakefield

Docket No.: 19949-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$146,000 (land \$22,300; buildings \$123,700) on Map 74/Lot 63, a single-family home on a 1.45 acre lot (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 argued the assessment was excessive because:

- (1) the Town incorrectly listed the Property as having 2 bedrooms and 1 bathroom when it actually had 3 and 2 respectively;
- (2) the Town inappropriately compared the Property to an unfinished home with a garage;

- (3) the Property is located on a private road (Elm Street) and should not have the same lot assessment as a property located on a Town-maintained road (Buttercup Lane);
- (4) the Property's "zone" was changed from "7" to "A3" without explanation; and
- (5) there are railroad tracks running along the rear of the Property.

The Town argued the assessment was proper because:

- (1) a Town-wide revaluation was performed in 2003 and the Property was assessed consistently with other properties;
- (2) there was no market data to support different lot values for properties on Town-maintained verses non-Town-maintained roads; and
- (3) the remaining changes on the assessment-record card were administrative in nature and were made to more accurately depict the Property.

Board's Rulings

The board finds the Taxpayer failed to prove the Property was disproportionately assessed.

Assessments must be based on market value. See RSA 75:1. The Taxpayer did not present any evidence of the Property's market value. The board is not obligated or empowered to establish a market value for the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). The assessment on a specific property must be proportional to the general level of assessment in the municipality. Without some market value evidence, the board is unable make a finding of disproportionality.

At hearing, the Taxpayer raised several questions relative to the Property's new assessment determined during the 2003 revaluation. The board will address them individually.

The Taxpayer questioned the Property's substantial assessment increase, approximately \$64,000, due to the town-wide revaluation. The board finds this fact does not carry the Taxpayer's burden to prove the Property was disproportionately assessed. Increases from past assessments are not evidence the Property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. (214) 1985. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

The Taxpayer also questioned the fact that during the revaluation the Town changed the Property's assessment-record card to show the Property had 3 bedrooms and 2 bathrooms. Prior to the revaluation, it had been listed as having 2 bedrooms and 1 bathroom. Although the Town acknowledged it had previously listed the Property incorrectly, the board finds the Town, when it relisted the Property during the revaluation, was fulfilling its responsibility under RSA 75:8 which obligates it to correct any assessment errors it discovers. Further, the Taxpayer did not show these listing errors resulted in disproportionality.

An additional concern of the Taxpayer was the fact the "zone" had changed from its previous designation as a "7" to an "A3". In response, the Town stated that A3 was the appropriate code designated by the number 7 in the Town's computerized assessment system and this was just an administrative notation on the assessment-record card which had no impact on the assessed value.

Additionally, the Taxpayer expressed concern that the railroad running behind the Property had a negative impact on the Property's value. The Town stated it had reduced the assessment on the land portion of the Property by 20% to recognize the fact the railroad tracks run along the rear boundary of the Property and 2 trains per day use that rail corridor. The

adjustment is noted on the assessment-record card by the “80” listed under the condition factor and the “RR” (railroad) designation in the notes section. Therefore, the board finds the Town did recognize a possible impact on the Property’s value through the condition factor adjustment for the presence of the railroad.

During the hearing, the Taxpayer contended it was inappropriate to compare properties such as hers that are located on a non-Town-maintained road (Elm Street) to properties that have frontage on a Town-maintained road (Buttercup Lane). The Town stated it found no market data to support the Taxpayer’s contention that some reduction in the assessment was warranted for this factor. The Town testified there are many private roads in the Town and there was no market evidence to support a loss in value.

The Taxpayer expressed concern with the Town’s comparison of her Property to a property that was under construction at 33 Buttercup Lane. Additionally, the Taxpayer stated her Property did not have a garage and the comparable, used by the Town, did. In response, the Town testified the \$160,000 selling price for the Buttercup Lane comparable sale was the price for that property after it was completed but before the garage was built. The Town testified the garage was built subsequent to the sale, and, therefore, the comparison was appropriate.

For all these reasons the board finds the Property was not disproportionately assessed and the Taxpayer failed to carry her burden of proof.

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: Barbara Barney, 182 Elm Street, Wakefield, NH 03872, Taxpayer; and Chairman, Board of Selectmen, Town of Wakefield, 2 High Street, Sanbornville, NH 03872.

Date: July 13, 2006

Anne M. Stelmach, Clerk