

Dorothy E. Polichronopoulos

v.

Town of Barnstead

Docket No.: 20051-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$93,000 (land \$77,200; buildings \$15,800) on Map 6, Lot 79, with a camp (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 has incorrectly assessed the amount of backland acreage;
- (2) of the backland acreage assessed, approximately 6.02 acres have been sold since her grandfather purchased the land in 1921; and

(3) the total assessment of the Property is excessive.

The Town argued the assessment was proper because:

- (1) the Town has based its acreage on tax maps prepared in 1985/86;
- (2) the tax maps were prepared based on aerial photographs and surveys that were available at the time and have been rechecked for accuracy in this case;
- (3) the Taxpayer has not provided a survey or other definite proof to support her contention of the acreage and her deed indicates the acreage as “more or less;” and
- (4) the Taxpayer has provided no evidence to support the assessment is excessive.

Board’s Rulings

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

The Taxpayer’s main point of contention in this appeal is the Town has miscalculated the amount of acreage the Property contains. The Taxpayer stated when the Property was purchased by her grandfather in 1921 the deed established the acreage at 20 acres more or less. In 1928, additional acres were purchased bringing the total to 23 acres. Subsequent to that purchase, however, several lots were removed and sold, reducing the overall acreage. The Taxpayer provided an estimate (Taxpayer Exhibit 4) showing 6.02 acres were removed by selling several of the individual lots. The Taxpayer contends these sales reduce the overall acreage from 23 to approximately 17 acres, a more accurate estimate of the Property’s total area.

In further support of her assertion that the acreage was incorrect, the Taxpayer submitted a survey (Taxpayer Exhibit 1) depicting a portion of the Property including the lots that had been previously subdivided which the Taxpayer contends should be removed from the area calculation.

In response, the Town stated the assessment was based on the best available information, primarily the tax maps that were generated in 1985/1986. The tax maps were created using aerial photography and any definitive deeds on hand in the Town records. Further, the Town stated that without additional supporting documentation that was more definitive to dispute the accuracy of the present estimate of area, the Town could not, in good faith, revise the Taxpayer's acreage. The board concurs with the Town that based on the evidence submitted by the Taxpayer and lacking a survey of the Property, the Taxpayer has failed to show the Town has incorrectly assessed the total land at 23 acres.

During the hearing, the Taxpayer stated she had no knowledge of the Property's market value. She did not feel, however, she could sell the Property for the \$102,400 equalized value determined by dividing the current assessment of \$93,000 by the median level of assessment in the Town for 2003 of 90.8% [$\$93,000 \div 0.908 = \$102,400$ (rounded)]. The courts have held that in measuring tax burden market value is the proper yard stick to determine proportionality. To succeed on a tax abatement claim, the Taxpayer has the burden of proving by a preponderance of the evidence that she is paying more than her proportional share of taxes. This burden can be carried by establishing that the Taxpayer's Property is assessed at a higher percentage of market value than the percentage at which property is generally assessed in the municipality. See Porter v. Town of Sanbornton, 150 N.H. 363,368 (2003) In the instant case, the Taxpayer had no knowledge of the Property's market value, although she did state that she did not think she could sell it for the \$102,400 equalized value. Without some market related support for the Taxpayer's contention, the board finds the Taxpayer has not carried her burden of proof and the appeal must be denied.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dorothy E. Polichronopoulos, 148 Olmstead Avenue, Manchester, NH 03103, Taxpayer; and Chairman, Board of Selectmen, Town of Barnstead, PO Box 11, Center Barnstead, NH 03225.

Date: 1/18/06

Melanie J. Ekstrom, Deputy Clerk