

Starace Family Trust

v.

Town of New Hampton

Docket No.: 20056-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$372,495 (land \$43,395; buildings \$329,100) on Map R18, Lot 4, a residence on two acres not in current use and the remaining 22 acres in current use (the “Property”), but do not dispute the current use assessment. 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 disproportional because:

(1) while it has “no problem” with the assessed value of the Property, a problem exists with the “timing” of the increase in the building value because the Town inspected only 25% of the

properties in the Town in each year and therefore did not make the same adjustments to each property in one year;

(2) a comparison of the assessments to five properties in Taxpayer Exhibit No. 1 for several years shows that they did not increase uniformly;

(3) to be on the “same playing field,” adjustments to all properties should be made in the same year; and

(4) the Property was purchased in 1988 and the home is now older and therefore not in as good shape as it was in the 1990’s, the time of the last Town-wide revaluation;

The Town argued the assessment was proper because:

(1) the Town reviews each property annually to determine if adjustments and corrections are needed, even if only 25% of the properties can be physically inspected (interior as well as exterior) in each year of a four-year cycle;

(2) the planned four-year cycle (2003 – 2006) will be completed this year when the Town is scheduled for certification review; and

(3) the statistics in Municipality Exhibit No. C compiled by the department of revenue administration (“DRA”) indicate the Town has achieved a reasonable degree of proportionality both in tax year 2003 and thereafter, using this cyclical process.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed and the appeal is therefore denied.

The Taxpayer submitted some assessment comparisons for the Property and the five others in Taxpayer Exhibit No. 1 for tax years 2002 – 2004. It noted the building value increased

dramatically on a percentage basis in tax year 2003 and the Property was not in ‘as good shape’ as it was in the mid-1990s when the Town did its last reassessment.

The Taxpayer’s representative acknowledged, however, having “no problem” with the assessment for tax year 2003 and did not submit any market value evidence. Without such evidence, the board has no basis for finding the Property was overassessed relative to its market value and the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). Moreover, focusing entirely on differences in the absolute or percentage increases in the building or land assessments (as in Taxpayer Exhibit No. 1) is not probative because assessments for each property as a whole can increase at different percentages without indicating disproportionality. See, e.g., Appeal of Town of Sunapee, 126 N.H. 214 (1985).

The Town’s assessor testified he physically inspected the Property in 2003 with the owner present and made adjustments to the assessment to reflect its condition. In tax year 2003, he also applied a local cost multiplier of “1.3” consistently throughout the Town, to replace the lower multiplier (“1.05”) that had been used previously. The depreciation shown on the assessment-record card changed for the Property, but the assessor explained this factor is not based simply on physical age; “straight line” depreciation is not used in the Town because age is but one of many attributes that may affect the market value of each building.

Regarding the Taxpayer’s concerns about a “level playing field” and the Town’s practice of not inspecting all properties in one year, the assessor testified he looked at values in the Town each year and adjusted all properties accordingly by looking at each assessment-record card and making appropriate changes. See RSA 75:8. He testified physical changes in each property were noted as they became known to the Town and a four-year cycle for the physical inspection

of all properties was undertaken to insure the Town met ‘constitutional’ and other requirements for proportional assessments. Using a four-year cycle to inspect all properties in the Town is not unusual and may be cost-effective, reducing the ‘manpower’ required in each year. The assessor further noted the DRA statistics shown in Municipality Exhibit No. C reflect the Town is meeting all required standards.

The board reviewed the testimony and other evidence presented, including the assessment-record cards provided by the Town (in Municipality Exhibit No. A) for the properties listed in Taxpayer Exhibit No. 1. Based on this evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The appeal is therefore 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

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: William and Linda Starace, 10 Jackson Pond Road, New Hampton, NH 03256, Trustees; and Chairman, Board of Selectmen, Town of New Hampton, 6 Pinnacle Hill Road, New Hampton, NH 03256.

Date: 5/11/06

Anne M. Stelmach, Clerk