

Clarence W. Houghton

v.

Town of Walpole

Docket No.: 20225-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$481,600 (land \$50,300; buildings \$431,300) on Map 21, Lot 50, a single-family residence with 1.70 acres of land (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the area of the useable attic space, given the steeply sloping roof line, is misrepresented on the assessment-record card;

- (2) the attic space is substantially overassessed as it can not be used the entire year due to poor insulation;
- (3) the quality of the house is overstated and the quality factor should be reduced from A4 to A3 and the condition factor should be revised from “excellent” to “good” to more accurately reflect the Property built in 1867;
- (4) an appraisal prepared by W. M. Borchers (“Borchers Appraisal”) estimated the value to be \$435,000 as of April 1, 2003; and
- (5) in spite of the Borchers Appraisal opinion of value, the assessment should be \$400,000.

The Town argued the assessment was proper because:

- (1) the Property has been assessed consistently compared to similar properties in the municipality as evidenced by the assessments of the comparable sales used in the Borchers Appraisal;
- (2) the attic space may well be only seasonal, but adds value to the Property and only 796 square feet of the space was assessed, some as finished space and some as unfinished space;
- (3) the kitchen and bath are not in keeping with the grand style of the house and a 15 percent functional adjustment has been applied to reflect the cost-to-cure this deficiency; an additional two percent cost-to-cure would be reasonable to insulate the attic space which would make it useable year-round; and
- (4) the Borchers Appraisal has some flaws and correcting those flaws results in a market value indication that supports the assessment.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$470,000 (land, \$50,300; building, \$419,700).

The board reviewed the Borchers Appraisal and finds, while it is of some value, it falls short of accurately valuing the Property in its entirety and lacks appropriate adjustments when comparing the Property to the sales utilized. For instance, the Borchers Appraisal made no time adjustments to comparables 2 and 3, and did not consider the \$5,000 in personalty sold with comparable 2. The Town testified properties were appreciating at three quarters of a percent to one percent per month during the time of the revaluation. Applying a one percent per month time adjustment to comparable 2, after removing the \$5,000 value of the personalty, would indicate a net adjustment of \$32,000 and an adjusted sale price of \$475,500 for comparable 2. Applying a one percent per month adjustment to comparable 3 would indicate a net adjustment to that sale of \$39,200 (rounded) or an adjusted sale price of \$470,300.

The Borchers Appraisal did not assign any value to the attic space. Its finish and bathroom, although not useable year-round because of the lack of insulation, does contribute value to the Property and is more a qualitative versus a quantitative adjustment. Further, the Property's land size is 1.7 acres and the Borchers Appraisal utilized a land size of 1.2 acres. Although minor, some adjustment to the comparables should be made for this factor. The board finds applying the appropriate adjustments to the Borchers Appraisal yields a market value that is supportive of the assessed value with the exception of a cost-to-cure for the lack of year-round use of the attic space.

The Taxpayer testified the attic space was overassessed for several reasons. The attic was renovated in 1989, at a cost of just under \$20,000, creating a 14 foot central hall with wallboard dividers to create four spaces which include a bathroom, an office area, art studio, and storage space. The attic access is from the second floor, up a steep, narrow staircase which opens through a trapdoor. The attic is not insulated and only has electric heat which has proven to be

expensive and ineffective in the winter; and the water in the bathroom has to be turned off in the winter because of the lack of heat and insulation. Thus, the space is only used for storage between October and May. Therefore, the attic space should not be listed as living space. The Town's testimony was only 796 square feet of the attic space was assessed. While the Taxpayer argued the space was only useable several months out of the year, the board concurs with the Town that a two (2) percent functional adjustment to the replacement cost new as a cost-to-cure (insulation) is reasonable. This two (2) percent recognizes the space has some deficiencies compared to the rest of the living space.

This adjustment, when added to the 15 percent cost-to-cure (functional adjustment for the inadequate kitchen and baths) applied by the Town and the normal 12 percent physical depreciation indicates a depreciated building value of \$409,700. This value, when added to the extra features (two fireplaces) value of \$10,000 and the land value of \$50,300 indicates a total assessed value of \$470,000.

While the Taxpayer raised legitimate concerns as to the Town's assessment methodology applied to the Property, any errors that may exist in the methodology do not necessarily result in a disproportionate assessment for the Property under appeal (see cite and discussion of Porter v. Town of Sanbornton, 150 N.H. 363 (2003) in the following paragraph).

The Taxpayer has the burden to show the resulting assessment in total is disproportionate. The supreme court's ruling in Porter is instructive.

To carry the burden of proving disproportionality, the taxpayer must establish that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

...

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. at 368.

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.

Id.

Lastly, the board finds the Taxpayer's own estimated value of \$400,000 for the Property is not supported by any of the evidence.

If the taxes have been paid, the amount paid on the value in excess of \$470,000 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

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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: Clarence W. Houghton, Post Office Box 458, Walpole, NH 03608, Taxpayer; and Chairman, Board of Selectmen, Town of Walpole, PO Box 729, Walpole, NH 03608.

Date: 3/2/2006

Anne M. Stelmach, Clerk