

Robert E. Scribner

v.

Town of Francestown

Docket No.: 20232-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$460,687 (land \$88,887; buildings \$371,800) on a single-family home on a 40.80-acre lot (Map 2, Lot 29, the “Property”). The Taxpayer also owns, but did not appeal, a 1-acre lot (Map 2, Lot 28), which the parties agreed was properly assessed. For the reasons stated below, the appeal for abatement on the Property 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 primary issue is the quality rating of the house, which should be “good” rather than “excellent,” resulting in a higher depreciation factor (30% rather than 15%);
- (2) comparable properties in Taxpayer Exhibit 1 in either similar or better condition were given a “good” quality rating;
- (3) all the renovations to the Property referred to by the Town, except for the porch, occurred before the Property was purchased in 1994;
- (4) as evident from the sales information contained in Taxpayer Exhibit 5, the Town’s comparable properties have higher values because they are better properties in “great condition”; and
- (5) both the comparables and the photographs (Taxpayer Exhibits 1 and 2) support a lower quality rating and the other proposed adjustments, which should result in an abatement to \$402,499.

The Town argued the assessment was proper because:

- (1) the Town has 129 “antique” properties and 78 were coded in excellent condition;
- (2) the examples given by the Taxpayer of antique properties coded in good condition at the time of the 2003 town-wide revaluation were the result of the Town’s lack of information about those properties, but several of them have since been corrected and changed to excellent condition;
- (3) any further changes would be inconsistent with the methodology used during the revaluation and result in a disproportionate assessment; and
- (4) following an inspection, an abatement was granted to the Taxpayer with detailed revisions made to various items on the assessment-record card and no further abatement is warranted because the assessment is fair, equitable and reflects market value.

The board confirmed with the parties that the level of assessment in the Town was 100.4% in 2003.

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 credible evidence of the Property's market value. To carry his burden, the Taxpayer should have made a showing of the Property's market value such as by presenting an appraisal or other evidence of value. This value would then have been compared to the Property's assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). The Taxpayer based his position on a revised assessment for the Property using a "good" condition factor, applying depreciation of 30% rather than the 15% used by the Town. The Taxpayer stated the Property did not warrant the Town's "excellent" condition rating. In support of his position, the Taxpayer provided examples of properties rated as "antique" and coded with a "good" condition factor. The Taxpayer contended these properties were in superior condition compared to the Property, that a "good" condition factor for the Property is appropriate and that making this adjustment would reduce the assessment and result in an abatement.

The Town rebutted the Taxpayer's argument by stating the Property had been treated consistently with other properties rated as antique in the Town. The Town testified there are 129 antique properties and 78 of them were coded in excellent condition during the revaluation. Further, the Town testified that several of the Taxpayer's comparable properties used to

demonstrate an inconsistent methodology by the Town in its coding of homes were actually undergoing renovations during the revaluation. Subsequent to their renovation these properties have become rated as excellent, in line with the Property. The Town stated the condition factors of “good” and “excellent” are not based on age alone; rather they are based on the condition of the property for its age. The Town testified the Property, although a 1790 cape, has been well maintained and is in excellent condition for its age. The board finds the Town’s use of a consistent methodology in rating and grading the properties within the Town to be some evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H., 187, 189-90 (1982). However, even if for argument purposes the board were to agree with the Taxpayer, which it does not, the Taxpayer failed to show the Town’s methodology resulted in a disproportionate assessment. Verizon New England, Inc. v. City of Rochester, 151 N.H., 263, 272 (2004) (the supreme court has emphasized that “disproportionality, and not methodology, is the lynch pin in establishing entitlement to . . . abatement,” citing Porter v. Town of Sanbornton, 150 N.H. 363, 369 (2003)).

The Taxpayer places undue emphasis on the prior revaluation, which occurred in 1989, where the Town assigned the Property a “good” rather than an “excellent” condition rating, and contends this rating should have been maintained in the 2003 revaluation. The board finds no merit in this argument because, as it has held, “the purpose of a revaluation is to remedy past inequities and adjustments will vary based on numerous factors. . . .A comparison of assessed values of neighboring properties, without evidence of their market values and adjustments for any value differences, does not carry the [t]axpayer’s burden.” Gzehoviak v. City of Keene, BTLA Docket No. 18809-01PT (May 20, 2003).

The Town testified there is a market for antique properties even if they are not fully renovated. Some properties are purchased by “purists” who maintain their property in its original condition to capture the unique, nostalgic amenities of such a dwelling. In response to the Taxpayer’s questioning, the Town conceded the “Hanchett” property should have been rated as an antique property and the Town will be making that revision. The Town explained that no building permits are required for any interior work or renovations and therefore the interiors of some properties are upgraded adding value to those properties without the Town having any knowledge of them occurring. In support of the Property’s assessment, the Town presented the sale of a property located at 445 Frankestown Road in the abutting town of Greenfield. Similar to the Property in several aspects, this property had comparable views as well as the fact the road divided the property. The Town’s assessor testified he was also the assessor in Greenfield and was the supervisor of the recent revaluation performed in that town making him very familiar with the properties in both municipalities. The 445 Frankestown Road property sold for \$400,000 in April, 2002 and was completely renovated after it was purchased at a cost of approximately \$100,000. If a 1% rate of appreciation is applied to the purchase price to account for the change in market conditions from the date of the sale to the date of the revaluation in the Town, April 1, 2003, the resulting value coupled with the cost of the renovations performed by the new owners, yields an indicated market value in excess of \$500,000 on April 1, 2003. The Taxpayer responded the assessment on the Greenfield property was challenged in a superior court action and was ultimately lowered (to \$375,000) due to a settlement just before trial that may not have been based on market value evidence. The Town immediately objected to this evidence of a settlement and this objection was well-founded: the board can give no weight to the settlement lowering the assessment as rebuttal evidence because settlements can occur for a

variety of reasons not necessarily indicative of the underlying merits of either party's position.

The board further notes the level of assessment in Greenfield in 2003, as measured by the median ratio, was well below the level of assessment in the Town (85.3% compared to 100.4%).

In any event, the fact this property situated in another town received a lowered assessment through a settlement is not probative of the market value of the Property.

The Taxpayer's comparison of several other properties in the Town and their assessments is not sufficient to sustain his burden of proof. Even if the board were to concur with the Taxpayer's conclusions regarding the comparative condition of these properties, the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H., 399, 401 (1987).

The Taxpayer raised concerns about several other alleged errors having a minor effect on the total assessment. However, the Taxpayer did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205 (1899).

In review, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Taxpayer presented no evidence of the Property's market value but rather a critique of the assessments of some other properties in the Town. The board finds the Town's reassessment used a consistent methodology when rating and coding the 129 properties labeled as "antique." Therefore, the board finds the Property is not disproportionately assessed and the Taxpayer's appeal is 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: Robert E. Scribner, 304 Reid Road, Frankestown, New Hampshire 03043, Taxpayer; and Chairman, Board of Selectmen, PO Box 5, Frankestown, New Hampshire 03043.

Date: September 28, 2005

Anne M. Stelmach, Clerk