Carl W. Chandler

v.

Town of Mason

Docket No.: 20333-03PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2003 assessments of $61,172 (land $49,372; buildings $11,800) on Map H, Lot 45, a 58.70 acre lot with a garage; and $183,300 (land $67,000; buildings $116,300) on Map H, Lot 29, a single-family residence on 7.490 acres (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 assessments were 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 assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment for Map H, Lot 45 was excessive because the "current use credit" computed by the Town had varied at several points during the 2003

assessment and the Town could not explain the "formula" for how the final current use assessments for unmanaged forest land and wetlands were calculated.

The Taxpayer argued the assessment for Map H, Lot 29 was excessive because:

(1) the Town had assessed the woodstove for $2,000;

(2) the woodstove is not real estate because it is moveable;

(3) to the extent the Town's assessment is not for the woodstove but the flue and hearth, it is excessive because the flue has been there since 1942 and the hearth is made of inexpensive brick; and

(4) the woodstove is the primary source of heat due to the dwelling having only electric baseboard heat otherwise.

The Town argued the assessment for Map H, Lot 45 was proper because:

(1) the Town utilized $137.00 per acre value for unmanaged forest land as set by the current use board reduced by 20% for public recreational use;

(2) the fact that the "current use credit" varied is not relevant because the Town made corrections to the ad valorem assessment during the informal reviews and the current use credit is simply the amount the ad valorem assessment is reduced to produce the current use assessment; and

(3) the Town, during the reassessment, sent out a survey requesting information from current use owners as to the quality, accessibility, and other features of the current use property, but the Taxpayer failed to return the survey.

The Town argued the assessment for Map H, Lot 29 was proper because:

(1) while originally noted as an assessment for a woodstove, the Town intended it to reflect the value for the separate flue and hearth for the woodstove and has recently made notation changes

to the Taxpayer's assessment-record card and other cards with similar woodstove flues and hearths; and

(2) because the Property has electric heat as its primary source of heat, the separate chimney, flue and hearth for the woodstove adds value to the Property and was consistently assessed throughout the Town in that fashion.

Board's Rulings

Map H, Lot 45

Based on the evidence submitted, the board finds the Town has properly complied with the current use regulations in assessing the current use unmanaged forest land at $137.00 per acre and the wetlands at $15.00 per acre, both adjusted by the 20% recreational factor. (See Current Use Board, "Current Use Criteria Booklet for April 1, 2003 – March 31, 2004.") The Taxpayer presented no evidence that the Town's choice of the high end of the current use range was inappropriate for the unmanaged forest land, other than stating he thought it was "high." The Town explained the procedure employed during the 2003 reassessment of seeking information from taxpayers as to the quality of their current use forest land to assist the assessors in determining where, within the range, to assess current use property. For whatever reason, the Taxpayer chose not to respond to the Town's survey request and thus provided no information either to the Town during the 2003 reassessment or at the hearing that the $137.00 an acre rate was incorrect.

Map H, Lot 29

The Taxpayer presented no evidence that the total assessed value of $183,300 for the Property was disproportionate relative to market value and the municipality's level of assessment, but only argued that the $2,000 assessment under "extra features" was incorrect for

either a woodstove or the chimney, flue and hearth for a woodstove. The board finds the Town's methodology of adding for a separate flue for an alternative heat source such as a woodstove is appropriate and is reflective of what the market would likely recognize for an electric heated house that has this alternate heating capability to offset the high cost of electric heat. The Town, upon question of the board, indicated that it had consistently assessed additional flues beyond that necessary for the primary heating source of each dwelling. The board also notes the base rate for the Taxpayer's dwelling is reflective of some below average elements (including the electric heat) and thus the Town's methodology does not double count the contributory value of the flue.

Consequently, the board finds the Taxpayer failed to show that the total assessed value of $183,300 was excessive or that the Town's methodology resulted in a disproportionate assessment. See Porter v. Town of Sanbornton, 150 N.H. 363, 368-69 (2003).

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

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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Carl W. Chandler, 1384 Brookline Road, Mason, NH 03048, Taxpayer; and Chairman, Board of Selectmen, Town of Mason, 16 Darling Hill Road, Mason, NH 03048.

Date: 3/27/06

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Anne M. Stelmach, Clerk