

Patricia S. and John J. Colony, III

v.

Town of Harrisville

Docket No.: 20416-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$365,200 (land \$163,300; buildings \$201,900) on Map 32, Lot 31, a single family residence on 0.370 acres of land (the “Property”). (The Taxpayers also own, but did not appeal, another property (Map 32, Lot 10) with an assessment of \$159,700; the parties did not dispute Lot 10 property was proportionally assessed.) For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) they have owned the Property since 1971 and, until the Town's 2003 revaluation, never questioned the assessments on it;
- (2) "something went wrong" during the 2003 revaluation and the Town's contract assessors (Nyberg, Purvis and Associates, Inc.) made mistakes in looking at neighborhoods and in relying on too few sales, resulting in the land values being inconsistent (but the building value is not in dispute);
- (3) the contract assessors erred in overvaluing the waterfront of the Property because, while it has 85 feet of frontage on Harrisville Pond, the area is quite shallow (1 – 2 feet depth), does not allow for swimming or boating (except by canoe) and is swampy with dead trees in the water;
- (4) a comparison of land values per acre (in Taxpayer Exhibit 1) reflects a markedly higher value per acre for land on Map 32 (where the Property is situated) compared to Map 61 (nearby and also on Harrisville Pond) and the cause appears to be an unjustified difference in valuing neighborhoods; and
- (5) a written appraisal by a licensed appraiser estimated the total market value of the Property at \$298,000 as of December 10, 2002;

The Town argued the assessment was proper because:

- (1) the Town's selectmen believe there may be problems with the consistency of neighborhood delineations in the 2003 revaluation and are taking steps to rectify them, but the concern is that some properties may have been underassessed rather than overassessed;
- (2) the photographs in Municipality Exhibits A and B reflect the Property is an attractive, well-maintained brick residence and the Taxpayers admit they would not sell the Property for even a lot more than its assessed value;

(3) the 2003 assessment on the Property made an adjustment to reflect the shallowness of the pond and conditions relating to it;

(4) the appraisal submitted by the Taxpayers, which was prepared for a refinancing, is not a reliable indicator of market value and contains several notable errors, including no adjustment for the waterfront location of the Property and no adjustment for the brick (rather than wood) exterior in relation to the comparables used; and

(5) the Taxpayers failed to meet their burden of proof.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving disproportionality and the appeal is therefore denied.

The Taxpayers did not dispute the building assessment, but only the land assessment which they felt should be lower. The board, however, must consider the value of the Property as a whole, not simply the land assessment.

Market value is the touchstone for proportionate assessments and the Taxpayers acknowledged they did not know the market value of the Property; they also admitted they would not sell it for even a lot more than its assessed value. The board was unable to give the Taxpayers' appraisal much weight as evidence of market value. The Property has a good view of and frontage on the Harrisville Pond (see photographs and addendum of Taxpayers' appraisal, included in Municipality Exhibit A) and yet no adjustments were made to the comparables that were generally in a village setting without waterfront. The board finds this waterfront amenity, coupled with the unique protected setting of Harrisville Village, would warrant an adjustment in some of the inferior comparable sales to produce an indicated value more timely reflective of the Property's unique attributes.

The Taxpayers raised concerns about the accuracy of the assessment methodology employed during the 2003 reassessment (performed by Nyberg, Purvis & Associates, Inc.) and the inconsistent application of land assessment models through the land adjustment factors and the neighborhood delineations. The nine 2003 Harrisville appeals filed for one tax year prompted the board under its RSA 71-B:16 authority to open a reassessment investigation (Docket No. 20668-05RA). In that docket, the board's senior review appraiser noted, in her June 1, 2005 report, problems with the assessment models, inconsistent or unclear handling of sales data and condition factors and inconsistent neighborhood delineations. These concerns led the Town to enter into a contract with Avitar Associates of New England, Inc. to address prospectively those concerns. The board noted, in an order dated August 15, 2005, that it would have ordered some reassessment remedy if the Town had not undertaken one on its own.

Nonetheless, despite the reassessment methodology concerns noted both by the board and the Taxpayers, those concerns alone do not lead to a finding of disproportionality without probative evidence that the resulting total assessment is disproportionate to market value and the Town's level of assessment. The New Hampshire Supreme Court's ruling in Porter v. Town of Sanbornton, 150 N.H. 363 (2003) 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). The plaintiffs produced no evidence regarding the fair market value of their properties. Rather, they attempted to prove disproportionate tax burdens by demonstrating that the town employed a flawed method.

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. at 369.

The board acknowledges the Taxpayers' concerns regarding the flawed methodology employed in the 2003 revaluation and the Town's commitment to correct systemic problems. For example, the calculations reflected in Taxpayer Exhibit 1 raise some questions regarding the accuracy of neighborhood delineations and land values for the properties shown in Taxpayer Exhibit 2 situated in the village around Harrisville Pond. The Town may be able to address this issue to improve the proportionality of assessments on those properties. In this individual abatement appeal, however, there was insufficient evidence to permit the board to conclude the assessment on the Property was disproportional.

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

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Patricia S. and John J. Colony, III, PO Box 51, Harrisville, NH 03450, Taxpayers; Lynn Cook and Gary J. Roberge, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representatives; and Chairman, Board of Selectmen, Town of Harrisville, 705 Chesham Road, Harrisville, NH 03450-5529.

Date: 4/13/06

Anne M. Stelmach, Clerk