

Diane L. Doyon and Linda Heminway

v.

Town of New Hampton

Docket No.: 20525-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$201,150 (land \$168,950; buildings \$32,200) on Map U14, Lot 19, a single-family residence on 0.095 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) an independent appraisal estimated the Property’s market value at \$160,000 as of April, 2004;

- (2) the “point” located on the Property does not contribute additional value because of its unique shape and location;
- (3) the adjustments to the assessment-record card made by the Town are inconsistent when compared to similar properties;
- (4) specifically, the Town’s changes to the “depth” and “excess” adjustment are not justified; and
- (5) the shape and small size of the Property precludes additional development, including the placement of a septic system and well.

The Town argued the assessment was proper because:

- (1) in prior years, the Town had failed to identify and value the “point” extending into Lake Winona, which adds value to the Property;
- (2) the adjustments to the assessment-record card are intended to reflect the contributory value of the “point”;
- (3) the Property has been assessed consistently with other waterfront properties in the Town; and
- (4) the Taxpayers’ appraisal is flawed and appropriate corrections result in a market value estimate supporting the assessment.

Subsequent to the hearing, the board took a view, on March 14, 2006, of the Property and some of the comparable sales submitted by the parties.

Board’s Rulings

Based on the evidence and testimony submitted as well as the board’s view of the Property, the board finds the proper assessment to be \$169,500.

The Taxpayers presented several arguments relative to the substantial increase in the Property's assessed value between the 1991 and 2003 reassessments. The board finds the Taxpayers' arguments unpersuasive on this point. A greater percentage increase in an assessment following a town-wide revaluation is not a ground for an abatement since unequal percentage increases are inevitable following a revaluation. Revaluations are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages from property to property. Increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). While it is possible that a flawed methodology on the Town's part may lead to a disproportionate tax burden, the flawed methodology does not in and of itself prove the disproportionate result. See Porter v. Town of Sanbornton, 150 N.H. 369 (2003).

Assessments must be based on market value. See RSA 75:1. The board finds the best evidence of the Property's market value is found in the Taxpayers' appraisal contained in Taxpayer Exhibit 1. More specifically, the board finds comparable sale 1 used in the appraisal is the best indicator of the Property's market value for several reasons: it has a similar location on the same side of the shoreline of Lake Winona, along West Shore Road; it has a modest, 528 square foot dwelling, similar in size to the Property's 735 square foot cottage, and it has a relatively small lot size, although larger than the Property's land area. After the board's view of the Property, the board walked the area around comparable sale 1 and viewed the outside of the dwelling. It is the board's opinion the Property would not sell for more than comparable sale 1. Comparable sale 1 sold for \$175,000 in January 2004, approximately eight months after the April 1, 2003 assessment date.

It is the board's experience, under the assessing system utilized by the Town, previously established by the department of revenue administration ("DRA"), that when factors such as the "depth" and "excess" adjustments are circled on the assessment-record card that is an indication the assessor has deviated from the standard methodology in the Town's assessment manual. The board finds the excess adjustment factor is the most appropriate place to correct the assessment of the land portion of the Property. At the hearing, the Town testified the excess adjustment had been increased to capture the contributory value of the "point" that had not been assessed previously. The board finds the extra value assigned by the Town is overstated. The point varies in width along its length, is densely vegetated and has few, if any, areas of level terrain. While the area of the "point" needs to be considered in the assessment, it contributes little to the utility of the lot and hence its value.

In determining the correct assessment for the Property, the board reduced the excess adjustment factor from 1.6 to 1.3 thereby reducing the assessed value of the land from \$168,950 to \$137,300 (rounded). Adding this value to the building value of \$32,200 yields a total assessment of \$169,500 (rounded).

Therefore, the board finds the Taxpayers carried their burden of proof to show the Property was disproportionately assessed and the abatement is granted to the revised assessment of \$169,500.

If the taxes have been paid, the amount paid on the value in excess of \$169,500 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 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: Gregory J. Doyon, 123 Buckboard Lane, Abington, MA 02351, Taxpayer Representative; and Chairman, Board of Selectmen, Town of New Hampton, 6 Pinnacle Hill Road, New Hampton, NH 03256.

Date: 4/10/06

Anne M. Stelmach, Clerk