

Jeri R. Mills

v.

Town of Hopkinton

Docket No.: 20632-04PT

and

William and Debra Bean

v.

Town of Hopkinton

Docket No.: 21097-04PT

DECISION

I. Issue Presented and Undisputed Facts

The sole issue raised by the “Taxpayers” in these abatement appeals involves RSA 76:14 and their belief the “Town” did not have the authority to issue “supplemental” tax bills in tax year 2004 to correct an assessment error affecting certain “Property” owned by them.¹ The board therefore consolidated these appeals for hearing (on July 31, 2007) and for decision. For the reasons discussed below, each appeal is denied.

¹ Jeri Mills owns a single-family property on 8.5 acres at 117 Old Putney Road, Map 105/Lot 021; and William and Debra Bean own a single-family a property on 17.8 acres at 615 Kearsarge Avenue, Map 222/Lot 047.

The Taxpayers argued “the supplemental [tax] bill dated 2/11/05 is in direct conflict with the NH Supreme Court decision in Pheasant Lane Realty Trust vs. City of Nashua...” (See Mills appeal document, attaching a copy of the Pheasant Lane decision, reported at 143 N.H. 140 (1998).²) The Taxpayers have not questioned the values estimated by the Town for the Property, but contend the Town could not lawfully correct any error made in the initial assessments with supplemental bills.

The error, acknowledged by the Town, occurred because the Town inadvertently failed to update the ad valorem values on certain land owned by some property owners (including the Taxpayers). These owners had other land in current use when a Town-wide revaluation was initially performed in tax year 2004 and the original tax bills were sent out. The Town’s representatives testified the Town imputed new land base rates in its computer assisted mass appraisal software (“CAMA”) in order to adjust the home site values to market values; unbeknownst to the Town, however, the CAMA software increased all home site values except for home sites associated with other land in current use (curtilage areas – see CUB 301.04). The Town submitted, pursuant to RSA 21-J:34, its MS-1 Form (Summary Inventory of Valuation) to the department of revenue administration (“DRA”) and set the 2004 tax rate without knowing the error had occurred.

The error was discovered only after the tax bills were sent out. The Town then conferred with DRA officials regarding how to address the error, and promptly notified all property owners by letter dated January 25, 2005, as follows: “The error was in the land assessment calculation for current use properties that include a primary home site (curtilage). These properties were, in

² The Bean appeal document states: “Received supplemental tax bill after final tax bill had been paid” and cites RSA “76:14.”

fact, not reassessed and were, therefore, under taxed.” See Town Hearing Memorandum and attachments (collectively marked as Municipality Exhibit No. A).

The Town corrected the affected assessments and computed a revised 2004 tax rate, which was reviewed and approved by the DRA. Supplemental bills and refunds were issued in February, 2005, id., before the end of the 2004 tax year. Those property owners with land in curtilage who had been underassessed because of this error, such as the Taxpayers, received supplemental tax bills (because of a higher assessment applied to a lower overall tax rate) and the majority of the property owners in the Town (some 2,000 others) received refunds (because of a lower overall tax rate).³ The Town’s representatives stated at the hearing that its goal was to make the effect of the supplemental billing and refunds “revenue neutral.”

II. Board’s Rulings

In every abatement appeal, a 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.

In these appeals, the Taxpayers have made no claim that the Property was disproportionately assessed after issuance of the supplemental tax bills, but only that what the Town did was unlawful under RSA 76:14, as applied in Pheasant Lane Realty Trust v. City of Nashua, 143 N.H. 140 (1998). The board does not agree abatements are warranted and therefore denies the appeals for the reasons discussed below.

³ The Town further stated: “Property owners who have only land in current use will not see any change [in their taxes].” Id.

In Pheasant Lane, the supreme court affirmed a superior ruling that the City of Nashua could not issue a supplemental tax bill to a single taxpayer, the owner of a large shopping mall, after discovering new information (in a recorded mortgage deed) indicating the mall “received twice as much lease income as previously estimated.” Id. at 141. The taxpayer successfully challenged the municipality’s authority to impose and collect the additional tax, based on RSA 76:14, which provides:

76:14 Correction of Omissions, or Improper Assessment. If the selectmen, before the expiration of the year for which a tax has been assessed, shall discover that the same has been taxed to a person not by law liable they may, upon abatement of such tax and upon notice to the person liable for such tax, impose the same upon the person so liable. And if it shall be found that any person or property shall have escaped taxation the selectmen, upon notice to the person, shall impose a tax upon the person or property so liable.

On its face, this statute, enacted in 1878, permits a municipality to correct for “omissions or improper assessment” under certain circumstances, such as when a “person or property shall have escaped taxation.” In Pheasant Lane, the supreme court stated “even if we agreed that the statute was ambiguous, we would conclude that RSA 76:14 does not include underassessed property within the scope of property which escapes taxation.” 143 N.H. at 143-44.

The Town, however, argues the Taxpayers’ reliance on Pheasant Lane is “misplaced” for several reasons, including the fact that:

Here, there has been no change in assessment strategy or theories of valuation, but merely the discovery of an administrative error resulting in the omission from taxation of the residential lot within current use property. The statute [RSA 76:14] permitting corrections of omissions or improper assessment properly applies, and thus these taxpayers are not entitled to an abatement.

Town Hearing Memorandum, p. 3.

While recognizing an argument to the contrary, as presented by the Taxpayers, is a plausible reading of Pheasant Lane, when considered in isolation, the board agrees with the

Town that RSA 76:14 should not preclude the issuance of supplemental tax bills on the specific undisputed facts of these appeals. The board finds the Town promptly acted on discovery of the error, conferred with DRA officials and notified all taxpayers of its intended correction. The correction, when implemented, resulted in more proportionate taxation throughout the Town.

Pheasant Lane is distinguishable on its facts because it involved a unilateral attempt by a municipality to increase the assessment on one specific property only, a property which had not “escaped taxation,” rather than a good faith effort to implement a Town-wide systemic remedy, approved by the DRA, to rectify an inadvertent error.

The board is guided in reaching this conclusion by other decisions of the supreme court which prescribe the authority of the superior court and the board in abatement appeals granted by the legislature. In construing the statutory phrase “make such order thereon as justice requires” (contained in both RSA 76:17 and RSA 76:16-a), the supreme court recently noted:

We have consistently held that in granting an abatement, “justice requires” more than simply determining that a tax is unlawful, because that would merely shift the plaintiff’s [or appellant’s] tax burden to other taxpayers. See Bretton Woods Co. v. Carroll, 84 N.H. 428, 430-31 (1930); Porter v. Town of Sandwich, 153 N.H. 175, 177 (2006). “Since Bretton Woods, we have repeatedly reaffirmed that the issue in an abatement proceeding is whether the government has taxed the plaintiff out of proportion to other property owners in the taxing district.” Porter, 153 N.H. at 177. Accordingly, in order to prevail in a petition for abatement, the petitioner must “prove that his tax was greater than it should have been with respect to the taxes of other property owners in the taxing district.” Ainsworth v. Claremont, 106 N.H. 85, 87 (1964). Therefore, “[t]he question to be tried is whether the petitioner is unlawfully or unjustly taxed as between him and the other taxpayers.” Id.

Gail C. Nadeau 1994 Trust v. City of Portsmouth, ___ N.H. ___, No. 2005-934, slip. op. (August 17, 2007). Thus, even if the Taxpayers could somehow prevail on a claim that the supplemental bills were “unlawful” in some sense under RSA 76:14, based on a possible reading of the Pheasant Lane decision, such a finding would be unavailing in these appeals since they have not

established the other necessary standards for a tax abatement. See also LSP Ass'n. v. Town of Gilford, 142 N.H. 369, 374-75 (1997), decided one year before Pheasant Lane, where the supreme court noted: "RSA 76:14... grants to a municipality the right to correct omissions or improper assessments before the expiration of the tax year for which the tax has been assessed."⁴

Further, if the Town had not proceeded to rectify (with the DRA's assistance and tax rate setting responsibility, see RSA 21-J:35) the inadvertent, systemic inequity, then the result would have been the creation of two levels of assessment in the municipality (one for non-current use related property and one for current use property). Different levels of assessment for different classes of property is prohibited by Part I, Article 12 and Part II, Article 5 of the New Hampshire Constitution. See also Appeal of Andrews, 136 N.H. 61, 65 (1992) ("We have consistently held that in order to achieve proportionality all taxpayers must be assessed at the same ratio."); cf. Sirrell v. State of New Hampshire, 146 N.H. 364, 370 (2001).⁵

For all of these reasons, the board finds the Property is not entitled to an abatement solely on the basis that the Town, in order to correct an inadvertent, systemic error that occurred during a revaluation in tax year 2004, promptly and in a timely manner (before the end of the tax year),

⁴ In LSP, the supreme court reversed the superior court's attempt to increase "the assessment for 1993 above the amount established by the town," based upon evidence presented at trial, because "the trial court lacked authority to do so." Id. at 373. Cf. the dissenting opinion of Justice Horton, joined by Justice Broderick, in LSP: "In abatement proceedings, the trial court may not increase the taxpayer's assessment above the amount established by the taxing authority." Id. at 378.

⁵ In Sirrell, the court noted:

In order for a tax to be proportional, all property in the taxing district must be valued alike and taxed at the same rate. See Opinion of the Justices, 99 N.H. 525, 527 (1955). Each taxpayer's property must be valued at the same percentage of its true value as all the taxable property in the taxing district and "shall be valued within a reasonable time before the tax is assessed." Bow v. Farrand, 77 N.H. 451, 451-52 (1915). A change in either the rate or the valuation affects the tax. Opinion of the Justices, 99 N.H. at 527; see Opinion of the Justices, 76 N.H. 609, 611 (1913).

Taxes must not merely be "proportional, but in due proportion, so that each individual's just share, and no more, shall fall upon him." Rollins v. Dover, 93 N.H. 448, 449 (1945) (quotation omitted). "[A]s any one's payment of less than his share leaves more than their shares to be paid by his neighbors, his non-payment of his full share is a violation of their constitutional right." Id.

issued supplemental tax bills to the Taxpayers and other similarly situated property owners (and refunds to others). The appeals are therefore 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

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Jeri R. Mills v. Town of Hopkinton/William and Debra Bean v. Town of Hopkinton

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jeri R. Mills, 117 Old Putney Hill Road, Hopkinton, NH 03229, Taxpayer; William and Debra Bean, 615 Kearsarge Avenue, Contoocook, NH 03229, Taxpayers; Russell F. Hilliard, Esq., Upton & Hatfield L.L.P., PO Box 1090, 10 Centre Street, Concord, NH 03302-1090; and Chairman, Board of Selectmen, Town of Hopkinton, 330 Main Street, Hopkinton, NH 03229.

Date: September 12, 2007

Anne M. Stelmach, Clerk