

Leonard Turcotte

v.

Town of Barrington

Docket No.: 21930-05PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2005 abated assessment of \$566,220 (land \$153,590; building \$412,630) on Map 250/Lot 0016, a parcel of approximately 30 acres at 79 Beauty Hill Road (the “Property”). For the reasons stated below, the appeal for further abatement 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 abated assessment was improper because:

- (1) for a number of years, the Town had applied a “-5%” adjustment to the assessed value of the house because of the unique “layout” pertaining to a cathedral ceiling (see Taxpayer Exhibit No. 1, Tabs 9 and 10);
- (2) during the 2004 reassessment, an assessor for the Town (Mary Moses) continued this “-5%” adjustment for the “cathedral area”;
- (3) in tax year 2005, however, another assessor (David C. Wiley) with the same assessment company removed this adjustment (id., Tabs 3 and 11);
- (4) the Town refused to “reinstate the 5% ‘layout’ reduction”; and
- (5) the Town should be ordered “to reapply the 5% reduction under the ‘Obsol Depr’ column” on the assessment-record card (id., p. 2) and grant the appropriate abatement.

The Town argued the assessment as abated was proper because:

- (1) the Town recalculated the area of the dwelling, taking into account the cathedral ceiling and reducing the finished area from 3,896 square feet (when the -5% adjustment had been previously applied) to 3,444 square feet (when it was removed from the assessment-record card);
- (2) the Town processed an abatement (from \$567,610 to \$566,220) based on the recalculation and no further abatement is warranted;
- (3) on January 28, 2008, the Town’s assessor (Jeff Earls) called the Taxpayer to arrange for an inspection and his refusal to cooperate is a ground for dismissal under RSA 74:17, II; and
- (4) the Taxpayer failed to meet his burden of proof.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed in tax year 2005. The appeal is therefore denied.

Assessments must be based on market value and the Town is required to examine the assessments annually. See RSA 75:1; and RSA 75:8. In order to obtain an abatement, a taxpayer must prove his or her “property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town.” Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). In making findings on market value, the board looks at a property's value as a whole because this is how the market values property; in other words, the board must consider a taxpayer's entire estate (all aspects of the buildings and the land) to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

In this appeal, however, the Taxpayer failed to present any evidence of the market value of the Property as of the assessment date. In his appeal document, he indicated (in Section G) “we are not appealing ‘market value,’ only errors and manipulation of the tax card.” (Emphasis added.) At the hearing, he stated “physical data – incorrect description or measurement of property” is listed as a reason for filing an appeal (in Section F of the appeal document). He asserted this should be sufficient to obtain a tax abatement on the Property. The board disagrees.

In some appeals, evidence of errors on the assessment-record card may be probative of a disproportional assessment, such as when the Town has incorrectly listed the number of bedrooms or bathrooms or when it has incorrectly measured the square footage of a house before calculating an assessment dependent on those errors. Here, however, the situation is quite different. The Town was not bound to continue a prior assessment methodology (namely, a -5% adjustment shown on several prior assessment-record cards dating back to the 1990's) when it updated assessments and made a substantial correction of the living area to take into account the cathedral ceiling issue in tax year 2005. See Taxpayer Exhibit No. 1, Tab 3, Paragraph 3.

Even if the board were to probe further as to why the Town removed the -5% adjustment for the cathedral ceiling when it recalculated the living area of the house and reduced the square footage, the Taxpayer did not show how this practice resulted in disproportionality. The board further notes the square footage reduction made by the Town on the assessment-record card is 11.6% (from 3,896 to 3,444 square feet), more than twice as much, all other things being equal, as the -5% adjustment the Taxpayer seeks to restore.

In effect, the Taxpayer's argument would require the Town to continue to use the same methodology and freeze the same adjustments on its assessment-record card from year to year, but no such requirement is imposed by law. In fact, the supreme court has ruled that even a "flawed methodology," if one can be shown to have been employed by a municipality, is not proof of disproportionality and does not, in and of itself, entitle a taxpayer to an abatement. See Porter, 150 N.H. at 369. In other words, it is an error of law to focus entirely on the "methodology that the town used to arrive at its assessment value, and not upon the actual harm," if any, resulting therefrom. Id. Moreover, "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. at 217, quoting Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205 (1899).

The Taxpayer also failed to provide any photographs of the interior of the house or to show in any other way how the "layout" of the cathedral ceiling, in and of itself, had a specific, detrimental effect on the market value of the Property.

Although the board finds the Taxpayer did not meet his burden of proving the Property is entitled to an abatement, the board denies the Town's motion to dismiss based on RSA 74:17, II for several reasons. First, the Town's efforts to obtain an inspection were not timely; Mr. Earls, the Town's representative, did not even attempt to contact the Taxpayer to arrange an inspection

until less than three weeks before the February 15, 2008 hearing date (by telephone call on January 28, 2008). Second, the Town never filed a formal, duly noticed motion to dismiss, but only requested dismissal orally as the hearing proceeded. In response, the Taxpayer stated he was not aware of the statute on which the Town was relying (RSA 74:17) and would have looked it up and responded appropriately had he known it would become an issue at the hearing. Third, while taxpayers generally have an obligation to comply with a proper and timely request for inspection, and cannot refuse to do so without facing the sanction of dismissal of their appeal pursuant to RSA 74:17, II, the board finds the detailed facts and circumstances of this appeal (summarized in some detail in Taxpayer Exhibit No. 1) do not support the granting of the Town's motion. Compare Appeal of Walsh, ___ N.H. ___, 934 A.2d 528 (2007).

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: Mr. Leonard Turcotte, 79 Beauty Hill Road, Barrington, NH 03825, Taxpayer; Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Representative for the Town; and Chairman, Board of Selectmen, Town of Barrington, 41 Province Lane, Barrington, NH 03825.

Date: 3/4/08

Anne M. Stelmach, Clerk