

Peter and Judith Antonucci

v.

Town of Litchfield

Docket No.: 22519-06PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$362,900 (land \$154,200; building \$208,700) on Map 16/Lot 17, 9 Shirley Way, a single family home on 1.03 acres (the “Property”). 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 (through Mr. Peter Antonucci) argued the assessment was excessive because:

- (1) the Property is not an “A1” home as listed by the Town because the kitchen is small, one bathroom is located in the middle of the house and is very small, the roof needs replacing, the house paint is peeling and the pine trim is rotting;
- (2) the Property has ongoing problems with termites and carpenter ants;
- (3) the taxes have increased dramatically and Town services are limited for the amount of taxes paid; and
- (4) the assessment should be at least \$50,000 lower.

The Town argued the assessment was proper because:

- (1) a Town-wide revaluation was performed in tax year 2006;
- (2) an abatement was granted by adjusting the depreciation on the condition of the home from good to average (9% to 11% depreciation); and
- (3) the Taxpayers failed to present any evidence of the market value of the Property and the appeal should be denied.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed and thus the appeal is denied.

To succeed on a tax abatement claim, the Taxpayers have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. This burden can be carried by establishing that the Taxpayers’ Property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 367, 368 (2003). The Taxpayers

provided no such evidence of market value, but merely testified as to certain conditions which Mr. Antonucci believed affected the value of the home. For example, Mr. Antonucci testified one bathroom and the kitchen are smaller than normal, the Property suffers from termite and carpenter ant invasions and the other conditions noted above, and was not of A1 quality as assessed by the Town.

Assessments must be based on market value. See RSA 75:1. To carry their burden, the Taxpayers needed to make a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Town, represented by its contract assessor, testified a revaluation was performed for the 2006 tax year. The 2006 level of assessment was 102.9% as determined by the department of revenue administration's median ratio. This means assessments generally were slightly higher than market value. The Property's equalized assessment was \$352,672 (\$362,900 assessment divided by the equalization ratio). This equalized assessment should provide an approximation of market value. The Town further testified that an adjustment from 9% to 11% was made (at the municipal level) to the value of the Property by changing the depreciation on the home from "good" to "average." The board finds this adjustment to the Property is reasonable and reflective of the conditions noted by the Taxpayers.

The Taxpayers also argued their taxes increased significantly from the prior tax year. The board finds such evidence does not prove the Property is disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). As the Town testified, a revaluation was

performed for tax year 2006. A greater percentage increase in an assessment following a municipal reassessment is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The Town revaluation complies with RSA 75:8 and is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages.

Further, the amount of property taxes paid by the Taxpayer was determined by two factors: (1) the Property's assessment; and (2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation, (1977) pp. 4-6. The board's jurisdiction is limited to the first factor, i.e., the board decides if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Bretton Woods Co. v. Town of Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and authority limited by statute).

Last, the Taxpayers argued their assessment should be reduced because there was no trash pick-up, no Town sewer and inadequate police services. Lack of municipal services is not necessarily evidence of disproportionality. Any effect on value due to lack of municipal services would be reflected in the selling prices of comparables and consequently in the resulting assessments. See Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992).

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(g). 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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Peter and Judith Antonucci, 9 Shirley Way, Litchfield, NH 03052, Taxpayers; Chairman, Board of Selectmen, Town of Litchfield, Two Liberty Way, Suite 1, Litchfield, NH 03052; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date:5/7/09

Anne M. Stelmach, Clerk