

John and Kimberly Brady

v.

Town of Hancock

Docket No.: 23030-06PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$733,600 (land \$106,800; building \$626,800) on Map R09/Lot 85B, a single family home and an attached “cottage” on a 6.490 acre lot (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 argued the assessment was excessive because:

(1) the 2006 reassessment increased the assessed value significantly from the \$480,000 assessed value reached through settlement with the Town just eight months prior to the reassessment;

- (2) the assessment increased by 40% while the average increase of assessments in the Town was 26%;
- (3) seven comparable properties indicate similar dwellings were assessed at a lower price per square foot than the Property;
- (4) one of the comparable properties, the “Pond” property, sold a week ago for \$885,000, significantly more than the \$627,700 assessed value, indicating that property and others were underassessed; and
- (5) the Property’s assessment should be reduced to approximately \$600,000 to be proportionately assessed with the comparables submitted.

The Town argued the assessment was proper because:

- (1) it performed a full reassessment in 2006 which achieved market value as indicated by the department of revenue administration’s (“DRA”) weighted mean ratio of 100% and median ratio of 100.8%;
- (2) the sales analysis of properties (Municipality Exhibit A) established the base assessment models for the land and provided the adjustments to the Marshall Valuation Service replacement costs so as to be in keeping with the Hancock 2006 real estate market;
- (3) the Taxpayers’ settlement with the prior assessors for \$480,000 is relative to the 2003 assessment year, despite it being reached in 2005;
- (4) the Taxpayers’ comparables are quite different properties with many of them being older and having greater depreciation applied to them; and
- (5) the Taxpayers presented no evidence of the Property’s market value but only presented select properties to support their claim of disproportionality.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove their assessment was disproportionate for the following reasons.

The Taxpayers did not present any credible evidence of the Property's market value. To carry its burden, the Taxpayers should have made 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); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

During the hearing, nonetheless, the Taxpayers indicated the lot and original cottage were purchased and built in 1995 for approximately \$120,000 and that the main dwelling was constructed in 2002 for a cost of approximately \$400,000. While certainly the 1995 cost estimates are dated and indeed the 2002 construction cost is four years old for the 2006 tax year under appeal, applying even a modest 5-6% annual market appreciation to those original costs indicates the assessment is not excessive. The Town testified it used a 6% annual market appreciation (based on paired sales analyses) to time trend the sales from 2004 through 2006 for estimating market value as of April 1, 2006. The board notes also the annual change in median ratios determined by DRA from 2003 through 2005 indicated market appreciation in the 11% to 17% per annum range. Regardless, either indications of market appreciation applied to the Taxpayers original costs do not indicate the Town's assessment is disproportionate to 2006 market value.

As the Town pointed out during hearing, the increase from \$480,000 to \$733,600 did not occur within an eight month period but rather occurred during the time period between the two

full reassessments of 2003 and 2006 when values were ostensibly at market value each of those years. The DRA median ratios for 2004 and 2005 of .824 and .748 respectively indicate the Hancock market was appreciating significantly during those years and thus the settlement assessed value of \$480,000 related to the 2003 market value level and not the 2005 level.

The Taxpayers argued their assessment increased at a greater percentage than other properties. The board finds such evidence does not conclusively prove the Property is disproportionally assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update 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 reassessment complies with RSA 75:8-a and is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages.

The Taxpayers submitted a number of comparable assessment record cards to indicate their Property was overassessed relative to those properties. For the following reasons, this comparison does not carry the Taxpayer's burden. First, many of the properties, as the Town noted, were older and had different levels of renovations and maintenance thus warranting greater depreciation than the relatively new buildings of the Property. Second, to the extent the comparables may indicate that some properties were underassessed, the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in

town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id. To the extent that any subsequent sales indicate any strata of property (neighborhood, type of property, etc.) may be underassessed or assessed at a different level than the general level of assessment within the Town, the remedy is for the Town, pursuant to RSA 75:8, to correct such assessments.

For all these reasons, the board finds lowering the Taxpayers' assessment to \$600,000 would result in a disproportionate assessment and, thus, the appeal is 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(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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John and Kimberly Brady, 55 Antrim Road, Hancock, NH 03449, Taxpayers; Chairman, Board of Selectmen, Town of Hancock, PO Box 6, Hancock, NH 03449; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: October 23, 2008

Anne M. Stelmach, Clerk