

Kim L. Morgan and Nancy J. Zamoiski

v.

Town of Wilton

Docket No.: 23063-06PT

ORDER

The board has reviewed the “Taxpayers” August 26, 2008 motion for reconsideration (the “Reconsideration Motion”) and the “Town’s” September 4, 2008 objection (the “Objection”). The Taxpayers ask the board to reconsider its August 4, 2008 Order (the “Order”), which granted the Town’s July 10, 2008 Motion to Dismiss (the “Dismissal Motion”), resulting in dismissal of this appeal. The Reconsideration Motion is denied for the following reasons.

First, while the Reconsideration Motion was filed within thirty (30) days of the Order pursuant to RSA 541:3, it is a woefully untimely response to the Dismissal Motion. The Taxpayers waited more than six weeks after the Dismissal Motion to file any response, even though the board’s rules prescribe a 10-day period for responding to a motion. See Tax 201.18(d). There is no explanation or indication in the Reconsideration Motion as to why the Taxpayers did not respond to the Dismissal Motion within the prescribed time period or make a request for a time extension. Instead, they delayed until well after the board issued the Order dismissing the appeal. The Dismissal Motion indicates the Town duly served the Taxpayers with

a copy on or about the date of filing (July 10, 2008) in accordance with the board's rules. See Tax 201.14. The board did not issue the Order dismissing the appeal until after the time expired for the Taxpayers to file an objection or other response to the Dismissal Motion, which states definite grounds for a dismissal.

Second, reconsideration motions are governed by RSA 541:3 and Tax 201.37 and are only granted when "good reason" is demonstrated. This requires, more particularly, a showing by the moving party that "the board overlooked or misapprehended the facts or the law and such error affected the board's decision." Tax 201.37(e). In addition, because parties have an obligation to submit all evidence and present all arguments in a timely manner, the board will not grant reconsideration motions if the moving party presents new evidence or makes new arguments that were available, but not made, before issuance of the board's ruling. Cf. Tax 201.37(g). Such a policy is both equitable to the parties, because it prevents a waste of resources and further delays, and in keeping with the board's authority to manage its docket effectively. See Appeal of Land Acquisition, 145 N.H. 492, 494 (2000).

Third, even if the board could overlook these fundamental, procedural reasons for denial, the Reconsideration Motion fails on substantive grounds. The Taxpayers acknowledge the price they paid for the "Property" in August, 2006 (\$485,000) and agree the assessment under appeal (\$487,400) "was very close to our purchase price"; they further agree the median ratio computed by the department of revenue administration ("DRA") for the Town was 99.5% and understand this indicates "that properties that sold in 2006 were assessed on average at 99.5% of sales price." See Reconsideration Motion, p. 1. Nonetheless, they challenge the board's dismissal order as "erroneous" because they contend: (1) the assessment on the Property they purchased in 2006 went up "more than three times the 7 comparables (69% vs. 22%)" since 2003; (2) their

assessment is higher on a per square foot basis when a “direct comparison” is made to a neighboring property (503 Isaac Frye Hwy); and (3) they do not believe the “entire town was being assessed at market value.” None of these contentions, however, warrant reconsideration of the dismissal of their appeal.

When a municipality undergoes a revaluation, assessments on different properties are likely to change at different rates because one primary purpose of the revaluation process is to remedy past errors and possible inconsistencies; otherwise, there would be less need for a reassessment. Therefore, it is simply not conclusive on the issue of disproportionality, where the Taxpayers have the burden of proof, that the assessment on the Property may have increased more in percentage terms than selected others (the seven comparables mentioned by the Taxpayers), unless it can be shown that each prior assessment was correct and each property changed (increased or decreased) in value in the real estate market at the same rate.

Moreover, the underassessment of others does not entitle a taxpayer appealing his own assessment to an abatement. See Appeal of Cannata, 129 N.H. 399, 401 (1987). Thus, even if the assessment on the Property is higher than one or another of their neighbors (and this disparity cannot be justified based on actual or perceived differences between the properties), this would not satisfy the Taxpayers’ burden of proving the Property is entitled to an abatement since the neighboring property might be underassessed (rather than the Property being overassessed). Consequently, the board cannot agree with the Taxpayers’ contention (Reconsideration Motion, p. 3) that “[i]f our neighbor has a better property and is assessed less, than [sic] our assessment is not equitable no matter how accurate it may be.” There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the

municipality's general level of assessment, represents a reasonable measure of one's tax burden.

See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

Finally, there is ample case authority that assessments must be based on market value adjusted by the level of assessment in the municipality, and there can only be one level of assessment applied for the municipality as a whole, rather than differing levels based on classes of property or neighborhoods, for example. See, e.g., Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Sunapee, 126 N.H. 214, 219 (1985). There is no dispute regarding whether the median ratio of 99.5% was correctly calculated by the DRA and municipalities regularly rely on this ratio for assessment purposes. See the DRA's January 29, 2007 letter (submitted with the Objection) which states: "[t]he median ratio is the generally preferred measure of central tendency for assessment equity.... The median ratio, therefore, should be the ratio used to modify the market value of properties under review for abatement...."

In other words, the level of assessment is generally agreed to be reflected in the median ratio. A taxpayer can, of course, assert another measure or statistic is a more reliable indicator of the level of assessment for the municipality as a whole, if the Taxpayer identifies an alternative and has the means of proving the alternative is more valid than the median ratio. Cf. Appeal of City of Nashua, 138 N.H. 261, 266-67 (1994) (if taxpayers "offer proof that another ratio . . . more closely reflects the general level of assessment," then the board "shall determine the . . . ratio most reasonably representative of the general level of assessment"). Here, however, the Taxpayers have not proposed an alternative, but simply contend the median ratio calculated by the DRA, when applied to the market value of the Property, does not result in a proportional assessment. Without more, the Taxpayers' subjective belief that the median ratio may not be

reflective of the level of assessment in the Town is not sufficient to withstand a motion to dismiss.

Before ruling on the Reconsideration Motion, the board also reviewed additional public information pertaining to the Town with regard to assessment equity. As noted above, the Town's median ratio was 99.5% in tax year 2006. This ratio was calculated from an overall sales sample of 64 valid sales, including 45 single family home sales, and the coefficient of dispersion ("COD") was 2.5% overall and 2.4% for the single family homes. In tax year 2007, the median ratio was 99.4% and was calculated based on 47 valid sales, including 30 single family homes, and the COD was 7.4% overall and 7.0% for single family homes. These statistics are within the guidelines established by the assessing standards board.¹

For all of these reasons, the Reconsideration Motion is denied.

Any appeal of the dismissal must be by petition to the supreme court within 30 days of this Order. RSA 541:6.

¹ The ASB guidelines are published on the web at:

http://www.nh.gov/revenue/munc_prop/documents/asbguides121903.doc.

They prescribe a median ratio between 90% and 110% and a COD not greater than 20.0. See also the detailed "DRA Report on Review Practices for Municipality of Wilton" for tax year 2003, also available on the DRA's website:

http://www.nh.gov/revenue/munc_prop/documents/wilton.doc. The board notes the Town is scheduled to undergo another certification review for tax year 2008.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to: Kim L. Morgan and Nancy J. Zamoiski, 32 Scott Road, Wilton, NH 03086, Taxpayers; Chairman, Board of Selectmen, Town of Wilton, PO Box 83, Wilton, NH 03086; and Todd Haywood, Granite Hill Municipal Services, 168 Hoit Road, Concord, NH 03301, contracted assessing firm for the Town.

Dated: 9/12/08

Anne M. Stelmach, Clerk