

Fred Yates

v.

Town of Acworth

Docket No.: 23213-06PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$26,300 (land \$24,000; building \$2,300) on Map 201/Lot 073.01, a 0.03 acre lot (the “Property”). The Taxpayer also owns, but did not appeal, Map 201/Lot 123, a 0.29 acre lot with a camp on the other side of Crescent Lake Road assessed at \$76,900, which the Town agreed was proportionally assessed. For the reasons stated below, the appeal for 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 assessment was excessive because:

- (1) the Property is much smaller in size (0.01 acres, not 0.03 acres) than shown in the Town's records and consists of 500 square feet (25' x 20') with room to park only one car, and is recognized by the Town to be unbuildable;
- (2) four other properties (shown on Taxpayer Exhibit No. 1) have much more area, with one as much as 12 times bigger, and another lot that is smaller (400 square feet), show the Property is disproportionately assessed;
- (3) the Town should not assess a smaller lot at a higher rate per square foot than larger lots; and
- (4) a "fair" price (and assessment) for the Property is \$10,000.

The Town argued the assessment was proper because:

- (1) the Town abated the assessment at the local level by \$1,200 by changing the dock listed on the prior assessment-record card to a wood deck ("wdk");
- (2) no adjustment to the land is warranted;
- (3) the Town was not aware the Taxpayer disputed the size until the day of the hearing, but, in answer to this question, the tax map prepared by the Town (two years earlier at the time of the revaluation) shows the size to be 0.03 acres, not 0.01 acre, and the assessment-record card shows the actual area to be 1,307 square feet, not 500 feet;
- (4) Municipality Exhibit 1 is a package containing one 'camp' sale, one land sale and other information showing the assessment on the Property was not "out of line";
- (5) the Taxpayer did not provide assessment-record cards for their own comparable properties; and
- (6) only if the size is incorrect would a further abatement be warranted.

The Town stated the level of assessment was 98.8% for tax year 2006, as measured by the median ratio computed by the department of revenue administration and the Taxpayer did not dispute this fact.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionally assessed. The appeal is therefore denied.

The key question in this appeal is the Taxpayer's assertion that the size of the Property is much smaller than shown on the Town's records -- 0.01 acres rather than 0.03 acres. If the size is smaller, then the assessment should be abated further (to \$10,000), according to the Taxpayer.

To resolve the size question, the board directed Theresa M. Walker, one of its staff review appraisers, to visit the Property, make an inspection and file a report with the board and supply copies to the parties. Based upon her review of the deeds and other documentation, physical inspection and measurements, Ms. Walker reached the following conclusions in her October 23, 2008 report (the "Report"): the Property is roughly rectangular in shape with 25 feet of frontage on Crescent Lake Road and 25 feet of frontage on Crescent Lake, with a westerly boundary of 40 feet and an easterly boundary of 52 feet; and the size of the lot is 1,150 ± square feet, which equates to 0.026 acres (which can be rounded to the 0.03 acre size used by the Town). Ms. Walker based her measurements on accepted standards and the existence of iron pins, which are also visible in the photographs accompanying the Report.

The board finds this measurement is the best evidence of the size of the Property and does not support the Taxpayer's arguments that the Property is much smaller (0.01 acres) in size. Further, the board has reviewed the Taxpayer's comments to the Report and finds they are not probative on the issue of whether the assessment should be abated. Among other things, it is the

Town selectmen, not the contract assessor, that have the statutory responsibility to assess property. See, e.g., RSA 75:1. Any settlement meeting or negotiation the Taxpayer may have had with the contract assessor (Mr. Richard Dorsett) or a ‘proposed’ resolution offered for settlement purposes cannot be considered by the board as a basis for granting an abatement.

The board has also reviewed the substantial evidence presented in Municipality Exhibit A and finds the Town followed a consistent assessment methodology in applying a site index and condition factors, for example. In general, this use of a consistent methodology is some evidence of proportionality. See, e.g., Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The Town also cited one vacant lot (Desbiens) of 4,356 square feet (0.01 acre) which was assessed at \$27,400 and sold in May, 2005 for \$29,933.

For all of these reasons, the board finds the Taxpayer failed to meet his burden of proving disproportionality and the appeal is 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(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: Fred Yates, 17 Washington Street, Westminster, VT 05158, Taxpayer; Chairman, Board of Selectmen, Town of Acworth, PO Box 37, Acworth, NH 03601; and Joseph Lessard, Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: November 26, 2008

Anne M. Stelmach, Clerk