

**Ruth C. Singer Revocable Trust**

**v.**

**Town of New London**

**Docket No.: 23369-07PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$850,900 (land \$652,100; building \$198,800) on Map 091/Lot 024, a single family home on 3.61 acres (the “Property”). 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 Town filed three motions in limine on February 17, 2009 and the Taxpayer filed written objections to all of them. At the start of the hearing, the board gave both parties a full opportunity to make any additional arguments pertaining to the issues raised in these motions and respond to board questions. The board then deliberated and ruled as discussed further below.

The board granted the Town's first motion in limine; this motion would require the Taxpayer to produce market value evidence to show the assessment on the Property was disproportionate rather than challenging the Town's methodology and is based on the holding in Porter v. Town of Sanbornton, 150 N.H. 363 (2003). See also Verizon New England v. City of Rochester, 151 N.H. 263 (2004), also cited in the Town's motion in limine. The board finds Porter and Verizon are dispositive of the issues the Taxpayer attempts to raise in this abatement appeal.

Further, the same issues were presented in two prior appeals to the superior court by the same owner on the same Property for tax years 2004 and 2005 and the Town included these court rulings in its motions in limine presented to the board. See Singer v. Town of New London, Merrimack County Superior Court Docket No. 05-E-279 (Final Order dated December 22, 2006); and Singer v. Town of New London, Merrimack County Superior Court Docket No. 06-E-292 (Order dated December 22, 2006). The latter superior court ruling dismissing the appeal (by granting the Town's motion for a directed verdict) was affirmed by the supreme court in an unpublished order also included in the Town's presentation to the board. See Singer v. Town of New London, Supreme Court Docket No. 2008-0333 (Order dated November 24, 2008).

Based on the board's review of the applicable law, the record presented (including the Taxpayer's appeal document and further written submissions to the board) and the representations on the record by its representative (John J. Singer), who objected to the motions and stated what evidence he intended to submit on behalf of the Taxpayer at the substantive hearing of this tax appeal, the board finds no basis to allow the appeal to proceed to a hearing. Doing so would be contrary to well established law and would also be a waste of resources.

Based on this record, the board finds the Taxpayer had no intention to submit any market evidence relative to the Property's tax year 2007 assessment, but rather was intending to challenge the Town's methodology in the same manner as Mr. Singer attempted to do so in the prior appeals. For example, when asked by the board, Mr. Singer stated he was "not really" appealing the assessment on the Property but wanted to challenge various alleged computational errors made by the Town in its tax year 2002 assessment update of waterfront properties ordered by the board.<sup>1</sup>

In Porter, the supreme court held that even proof of a flawed methodology was legally insufficient to carry a taxpayer's burden in abatement appeals. Even if a taxpayer could establish facts leading to a finding of fraud, bad faith or arbitrariness on the part of the municipality, this merely shifts the burden of production of evidence, but does not automatically establish disproportionality. See Porter, 150 N.H. at 366, 368, 369 and 371; and Verizon, 151 N.H. at 272:

In Porter . . . we noted that disproportionality, and not methodology, is the linchpin in establishing entitlement [to a tax abatement]. . . . [T]o carry the burden of proving disproportionality, a taxpayer must establish that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town. (Citing Porter at 368.) We reasoned that while it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result. Id. at 369. Our holding in Porter controls the outcome of the present case.

At the hearing, the board made further inquiries of the Town's assessor (Normand G. Bernaiche) regarding the process used in completing the Town-wide statistical update for tax year 2005. (This update established the assessment for that year and for succeeding tax years, including tax year 2007, the year under appeal.) The board finds, based on the assessor's responses regarding the market analysis employed by the Town and the recalibration of assessment models resulting from this analysis, the Taxpayer's assertion of arbitrariness on the

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<sup>1</sup> See Town of New London, BTLA Docket No. 18488-01RA (Order for Reassessment dated September 4, 2001).

Town's part is without basis; nor is there any evidence of fraud or bad faith. Consequently, the burden of proving disproportionality (based on market value evidence and the level of assessment) remained with the Taxpayer, based on the clear holdings in Porter and Verizon discussed above, and the supreme court's order applying Porter to affirm the denial of the Taxpayer's tax year 2005 appeal. The Taxpayer, through its representative, indicated it would not present any such evidence.

Given the board's findings and ruling, the remaining two motions in limine are moot and the board need not rule on them or on the Town's submitted requests for findings of fact and rulings of law. For all of these reasons, 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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dr. John J. Singer, 40 Herrick Cove Lane, New London, NH 03257, representative for the Taxpayer; Chairman, Board of Selectmen, Town of New London, 375 Main Street, New London, NH 03257.

Date: March 12, 2009

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Anne M. Stelmach, Clerk

**Ruth C. Singer Revocable Trust**

**v.**

**Town of New London**

**Docket No.: 23369-07PT**

**ORDER**

The board has reviewed the rehearing motion filed by the “Taxpayer’s” representative (John J. Singer) on March 26, 2009 and the “Objection” filed by the “Town” on April 1, 2009. The rehearing motion was filed in response to the board’s March 12, 2009 Decision granting a dispositive motion in limine filed on behalf of the Town and denying this tax abatement appeal. The board hereby dissolves its suspension order entered on April 7, 2009 and denies the rehearing motion for the reasons discussed below.

The rehearing motion is mistaken in asserting the board did not give Mr. Singer ample opportunity to respond in full to the Town’s three motions in limine. The Clerk’s February 25, 2009 letter to the parties advised them the board would address the three motions “as the first issue at the hearing” scheduled for March 3, 2009. Mr. Singer responded by filing written objections to each of the Town’s motions. The board began this hearing at 9:05 a.m. and devoted considerable time to the arguments made by Mr. Singer, on behalf of the Taxpayer, and Mr. Normand G. Bernaiche, on behalf of the Town, pertaining to the motions. The board took a recess at 9:50 a.m. to deliberate on the questions presented. The board then reconvened the

hearing and ruled from the bench, stating its reasons for granting the Town's first motion in limine and denying the Taxpayer's appeal. The board further stated on the record that this oral ruling would be followed by a written decision.

The Decision describes the issues presented and responses received from Mr. Singer pertaining to the motions in limine. The Decision further explains why, given Mr. Singer's statements that he would not be submitting any market value evidence on behalf of the Taxpayer to support a tax year 2007 abatement on the "Property," the board denied the appeal based on one of the Town's motions in limine (and how this ruling rendered the remaining two motions moot).

Mr. Singer fails to understand that motions in limine are not limited to "Jury trials" and can be entertained to identify issues that can no longer be in dispute, based on the facts or law presented.<sup>2</sup> Nothing in the board's rules preclude it from considering or ruling on such motions or on other dispositive motions, such as motions to dismiss or motions for summary judgment. (See RSA 541-A:31, VI(b) (the record in a contested case includes, among other items, "all pleadings, motions, objections, and rulings").) Mr. Singer also fails to understand that Mr. Bernaiche can represent the Town and present motions on its behalf even if he is not a 'full-time' Town 'employee.' Assessing contractors like Mr. Bernaiche routinely appear before the board to defend municipal assessments in tax abatement appeals and need not be full-time employees in order to do so. (See Tax 102.34: "'Municipal Consultant' means a person or entity hired by a municipality to represent its interests in a proceeding.") At the hearing, Mr. Singer did not object to Mr. Bernaiche's appearance on behalf of the Town and cannot do so now.

The board has reviewed the remainder of the rehearing motion and finds it is nonresponsive and irrelevant to any issue that can now properly be considered, given the board's

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<sup>2</sup> See, e.g., Black's Law Dictionary (Rev. 4<sup>th</sup> ed. 1968), which defines "in limine" to mean: "[o]n or at the threshold; at the very beginning; preliminarily."

authority and the scope of rehearing motions. See RSA 541:3 and Tax 201.37. The Taxpayer should understand the board's authority and the rights of taxpayers who file appeals are limited by statute. See Appeal of Land Acquisition, 145 N.H. 492, 494 (2000). The board does not, and cannot, serve as an open-ended forum for venting any suspicions, accusations or diatribes a taxpayer or his or her representative may be inclined to state against a municipality or its representatives, agents and employees. Instead, the board must limit itself to hearing relevant evidence regarding whether a property has been disproportionately assessed, measured by its estimated market value and the level of assessment in the municipality, as established in the case authorities cited in the Decision, pp. 2 – 3. Despite being given ample opportunity to present such evidence, Mr. Singer repeatedly stated his intention not to do so.

For all of these reasons, the Taxpayer's rehearing motion is denied. Any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the date shown below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Dr. John J. Singer, 40 Herrick Cove Lane, New London, NH 03257, representative for the Taxpayer; Chairman, Board of Selectmen, Town of New London, 375 Main Street, New London, NH 03257.

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Date: April 23, 2009

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Anne M. Stelmach, Clerk