

James J. Murn

v.

Town of Dalton

Docket No.: 24085-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$180,600 (land \$33,000; building \$147,600) on Map 408/Lot 100, 985 Faraway Road, a single family home on 1.0 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Town made an error in listing the living area as 1,848 square feet on the assessment-record card;

- (2) although the Town eventually listed the Property's living area correctly at 1,232 square feet (changing the description from a 1½ story "cape" to a 1 story "ranch" style home), it did not make any corresponding reduction in the assessed value (see Taxpayer Exhibit No. 1);
- (3) while some attic space (616 square feet) exists on the second floor, it was not constructed to be a living area and has not been used as such (as shown in the photographs submitted in Taxpayer Exhibit No. 2); and
- (4) the Property is entitled to an abated assessment of \$145,484 (calculated by reducing the assessed building value from \$147,600 to \$112,844 and adding the assessed land value of \$33,000, which is not disputed).

The Town argued the assessment was proper because:

- (1) the Town's assessing software generated the assessed value and that value did not change even after the Town made the living area correction requested by the Taxpayer;
- (2) the assessment is proportional whether the Property is described as a 1½ story cape or a 1 story ranch, because, as explained to the Taxpayer and shown on the "illustrative" assessment-record cards, the Town's assessing software system treated the second floor as unfinished and "0" percent complete (see Municipality Exhibit A); and
- (3) the Taxpayer failed to meet his burden of proving disproportionality.

The parties agreed the level of assessment in the Town for tax year 2008 was 96.1%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$156,600 for the reasons detailed below. The appeal is therefore granted.

To determine whether a tax abatement is warranted, the board considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it”). Further, “judgment is the touchstone” in a tax abatement appeal. See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

Based on the testimony and photographs presented, the board is persuaded the second floor area of the Property is not “living area” and does not add the amount of contributory value reflected on the Town’s assessment-record card, either as originally issued or as revised. (\$60 x 616 square feet = \$36,960.) The Taxpayer designed and built the house himself in 2005. He testified he built the second floor for additional storage space rather than as living area. For example, the size of the “floor joists” used will not support the full weight of a second floor living space, the walls are unfinished, there is a lack of heating, wiring and electricity and this area does not have either bedrooms or a bathroom. While the Taxpayer did add several “dormer-style windows” for light and ventilation, the second floor of the house is essentially an attic space used only for storage and drying clothes. By comparing the assessment-record card for the Property and an adjacent property (Map 408, Lot 99), the Taxpayer

reasonably concluded that the Town's assessment methodology in effect valued the second floor as living area at approximately \$60 per square foot.¹ The board is unable to accept the Taxpayer's computations completely, however, because they in effect imply the second floor area adds zero contributory value to the Property.

Using its judgment and experience, the board estimates the contributory value is likely to be the lesser amount of \$10,000 (rounded). The extra or bonus space is something that would be valued by a potential purchaser, even if was not constructed to be, and has not been used as, a living area. It adds market value to the Property just as surely as a basement does. A \$10,000 estimate of the contributory value of this space correlates well with the contributory value assessed by the Town for basement space ($\$19,552 / 1,232$ square feet = $\$15.87$ per square foot x 616 square feet = $\$9,775$).

The board considered the Town's arguments that the assessment is a reflection of the assessing software system used and that the higher building value it applied (\$147,600) is supported by the 'illustrative' alternative assessment-record cards shown in Municipality Exhibit A, even if the total living area is changed (to 1,232 square feet from 1,848 square feet). The board does not agree because it finds these computations to be confusing and somewhat inconsistent. For example, these cards show several alternative living area estimates but not the actual base rates applied by the Town for each illustration or the effect of treating the second floor as 0% or 100% "complete" and no value is shown for the effects of such changes. Further, the board is unable to discern how the Town arrived at 1,848 square feet of living area based on the numbers presented on these cards. For assessments to be proportional, a municipality must follow a consistent methodology, ideally one that is reasonably transparent and readily understood.

¹ The board has reviewed and rounded the assessment amounts calculated by the Taxpayer: \$58.76 per square foot of living area for the Property and \$61.21 per square foot for the other property. The Taxpayer derived these estimates by subtracting the specific item values shown on the assessment-record cards (for the basement, flooring and other items) from the total replacement cost and then dividing this amount by the square footages shown on these cards.

Making the adjustments noted above and using the other values shown on the Town's assessment-record card for the Property, which the Taxpayer did not dispute, the board made the calculations shown below:

Abated Building Value:	
Living area (1,232 square feet on first floor times \$60 per square foot)	\$73,920
Full basement	\$19,552
Hardwood floors and other items on assessment- record card	\$23,999
Estimated contributory value of 2d floor (attic)	<u>\$10,000</u>
Total building value (replacement cost)	\$127,471
Depreciation (3%)	(\$3,824)
Depreciated Building Value	\$123,647
-- Rounded	\$123,600
Land Value:	\$33,000
Total Abated Assessed Value	\$156,600

In summary, the board finds the Taxpayer met his burden of proving the Property was disproportionally assessed based on the discrepancies on the assessment-record cards presented. The board finds the second floor constructed on the Property has some utility as attic or storage space, but does not constitute additional living area assessable at a higher contributory value. The appeal is therefore granted and the total assessment on the Property is abated to \$156,600.

The Taxpayer also requested reimbursement of his costs (the appeal filing fee, his mileage for attending the hearing and the value of his time for missing work). The board denies this request. An award of costs is governed by Tax 201.39 and is discretionary. The board finds an award is not appropriate under the standards articulated in this rule and the circumstances presented in this appeal.

If the taxes have been paid, the amount paid on the value in excess of \$156,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the

Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

Any party seeking a rehearing, reconsideration or clarification of this decision must file a motion (collectively “rehearing motion”) within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37(a). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: James J. Murn, 985 Faraway Road, Dalton, NH 03598, Taxpayer; Chairman, Board of Selectmen,

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Town of Dalton, 756 Dalton Road, Dalton, NH 03598; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A, PO Box 767, Sanbornville, NH 03872, Contracted Assessing Firm.

Date: August 17, 2010

Anne M. Stelmach, Clerk

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ORDER

The board has reviewed the “Town’s” September 2, 2010 Rehearing Motion (the “Motion”). In accordance with RSA 541:5 and Tax 201.37(d), the board issues this suspension Order until it rules on the Motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: James J. Murn, 985 Faraway Road, Dalton, NH 03598, Taxpayer; Chairman, Board of Selectmen, 756 Dalton Road, Dalton, NH 03598; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A, PO Box 767, Sanbornville, NH 03872, Contracted Assessing Firm.

Date: September 16, 2010

Anne M. Stelmach, Clerk