

Joseph S. Haas

v.

Town of Boscawen

Docket No.: 24496-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$52,000 (land \$22,400; building \$29,600) on Map 49/Lot 33, a cottage on 2.95 acres (the “Property”). The Taxpayer also owns, but did not appeal, a 1.5 acre vacant lot, Map 49, Lot 36, assessed at \$5,900. 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:

(1) based on Part I, Article 38 of the New Hampshire Constitution, the Town has an obligation to be “frugal” but has not done so with respect to school financing; and

(2) this appeal “is not based on the assessment but on how the tax is applied.”

The Town argued the assessment was proper because:

(1) the Taxpayer presented no evidence to meet his burden of proving disproportionality; and

(2) the appeal should be dismissed.

Board’s Rulings

At the close of the Taxpayer’s presentation at the June 22, 2010 scheduled hearing, the Town moved to dismiss this tax abatement appeal based on the Taxpayer’s burden of proof. The board finds merit in the Town’s position and dismisses the appeal for the following reasons.

As the board noted at the hearing, New Hampshire law authorizes only two grounds for granting a tax abatement under RSA 76:16-a: (1) disproportional assessment (“whether the government has taxed the plaintiff out of proportion to other property owners in the taxing district”); and/or (2) a “claim of inability to pay a tax levy.” See, e.g., Porter v. Town of Sandwich, 153 N.H. 175, 177 (2006), citing Bretton Woods Co. v. Carroll, 84 N.H. 428, 431 (1930), Ansara v. City of Nashua, 118 N.H. 879, 880 (1978), and other cases.

At the hearing, the Taxpayer presented no evidence regarding either of these grounds for a tax abatement. He stated this appeal was “not based on the assessment” but rather on “how the tax is applied” in the Town and also did not present any financial or other facts to demonstrate an inability to pay the tax resulting from the assessed value of the Property.¹

Instead, the Taxpayer simply cited and discussed in general terms Part I, Article 38 of the New Hampshire Constitution, contending this section requires government to operate with “frugality” and provide only “what is needed.” He then mentioned “poverty rate” statistics and

¹ The Taxpayer has some experience with the mechanics and purposes of the tax abatement process, having filed appeals with the board in prior years. See, e.g., BTLA Docket No. 21239-04PT (August 1, 2006) (tax abatement granted based on finding, on the facts presented, that the other lot, Map 49, Lot 36, was overassessed in tax year 2004).

the “department of education,” expressing general dissatisfaction with the amount the Town is currently spending on public schools. If the amount of local government spending is reduced, the tax burden of each property owner in the Town, including the Taxpayer, is likely to be lower, of course, but questions regarding the proper level of public spending on education cannot be decided in a tax abatement appeal; instead, such questions are inherently political in nature and can be addressed and resolved in a political forum (through the Town’s school budget setting and approval process or the Legislature).

The board’s powers are expressly defined and limited by statute. See, e.g., Appeal of Land Acquisition, 145 N.H. 492, 494 (2000), citing Appeal of Gillin, 132 N.H. 311, 313 (1989) and Appeal of Town of Sunapee, 126 N.H. 214, 216 (1985). The Taxpayer has cited no authority, nor has the board found any, for the claim he is making regarding the constitutional provision he cites (Part I, Article 38) and how it could confer authority on the board to grant a tax abatement on the Property simply on the basis of his stated concerns regarding the level of governmental spending on public education. To the contrary, at least one supreme court decision has held a tax abatement cannot be granted based on analogous concerns regarding public education spending. Cf. Barksdale v. Town of Epsom, 136 N.H. 511, 513-14 (1992) (selectmen lacked authority to abate real estate taxes for homeowners with children attending school elsewhere).

For all of these reasons, the board finds the Taxpayer did not meet his burden of proving the Property is entitled to a tax abatement. The appeal is therefore dismissed.

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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joseph S. Haas, PO Box 3842, Concord, NH 03302, Taxpayer; Chairman, Board of Selectmen, Town of Boscawen, 116 North Main Street, Boscawen, NH 03303; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: July 6, 2010

Anne M. Stelmach, Clerk