

**John T.B. Mudge**

**v.**

**Town of Randolph**

**Docket No.: 24795-09PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 abated assessment of: \$215,400 (land \$103,500; building \$111,900) on Map U2/Lot 5, a single family home on a 3.4 acre lot (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. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment should be further abated because:

(1) the Property was purchased by the Taxpayer’s parents in 1956 and the residential building, constructed in 1957, is on piers, has no foundation, only single-pane windows and no insulation, which renders it a “3-season home”;

(2) the Town did not assess the contributory value of the views from the Property correctly and the Town's "view" values are not consistently applied because, among other things, properties on the same street as the Property have view values (as shown on the assessment-record cards) ranging from \$25,000 to \$75,000;

(3) the Property was appraised for \$190,000 as of August 19, 2005 by Androscoggin Appraisal Associates (the "Androscoggin Appraisal," contained in Taxpayer Exhibit No. 1, Section L), but, due to the "recession," the value of the Property is "15%" less (for tax year 2009); and

(4) the assessment should be \$165,000 by reducing the building value to \$78,000 (from \$103,500) and the view value to \$40,000 (from \$65,000), while keeping the land and features values the same, as detailed in the Taxpayer's exhibits presented at the hearing (see, e.g., Taxpayer Exhibit No. 2, Divider #1, Section 7, p. 3).

The Town argued no further abatement is warranted because:

(1) a Town-wide revaluation was undertaken and completed in tax year 2009;

(2) the assessment on the Property was substantially abated from an initial \$242,600, first to \$231,200 and then to \$215,400 after an inspection of the Property when the Town found and corrected certain errors on the assessment-record card;

(3) the Taxpayer's market value evidence is "thin" and unreliable and no credible market value conclusions can be drawn from it; and

(4) criticism of a Town's assessment methodology is not sufficient for demonstrating disproportionality and meeting the Taxpayer's burden of proof and therefore the appeal for further abatement should be denied.

The parties agreed the level of assessment was 97%, the median ratio calculated by the department of revenue administration.

One board member, Theresa M. Walker, did not attend the November 9, 2011 hearing (because she was not appointed until after that time). She has reviewed the record, including the electronic recording of the hearing, and has participated in deliberating and deciding this appeal.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayer failed to meet his burden of proving the Property was disproportionately assessed in tax year 2009. The appeal is therefore denied for the following reasons.

Assessments must be based on market value, adjusted by the level of assessment in the Town. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

Therefore, the Taxpayer had the burden of establishing the market value of the Property was below the equalized value reflected in the abated assessment. (\$215,400 abated assessment divided by 97% level of assessment = \$222,100, rounded, indicated market value as of April 1, 2009 assessment date.)

While there is no question the Taxpayer spent considerable time and effort in researching and preparing for the hearing of this appeal, the board finds much of the record presented is not probative on the relatively narrow issue of whether or not the market value of the Property was below \$222,100 (as of the April 1, 2009 assessment date) so as to be entitled to a further tax abatement in tax year 2009. For example, the Taxpayer presented voluminous, and somewhat repetitive, details (in multiple notebooks as well as other written submissions<sup>1</sup>) regarding his investigation of how the Town's assessors evaluated and measured relative mountain and other views from different properties, his opinion as to errors and inconsistencies on the assessment-

---

<sup>1</sup> Along with the notebooks introduced as Taxpayer exhibits, much of the same information is contained in the appeal document and in the Taxpayer's prior correspondence which includes his August 17, 2010, November 19, 2010 and October 20, 2011 letters to the board and his December 4, 2010 letter to the Town Selectmen (also copied to the board).

record cards with respect to the physical description of various properties throughout the Town, and a detailed description of the condition of the Property.

The Taxpayer has presented multiple requests for relief (stated in the form of two “Conclusion” sections of his exhibits; see Taxpayer Exhibit No. 2, Divider #1, Section VII and Divider #2, “Conclusion” tab). In these materials, the Taxpayer questions and criticizes various aspects of the Town’s assessment methodology and asks the board to determine whether the 2009 Town-wide reassessment was properly performed. However, those questions go far beyond the scope of this tax abatement appeal and the board’s authority under RSA 76:16-a.<sup>2</sup> In an RSA 76:16-a tax abatement appeal, the board’s jurisdiction is limited to the issue of whether a taxpayer’s property was proportionally assessed, not to consider any other questions or problems the taxpayer may have with the Town. (See RSA 75:1; and Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board’s powers and jurisdiction, are determined by statute).)

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, in making market value findings, the board must determine for itself issues of credibility and the weight to be given each piece of evidence because “judgment is the touchstone.” 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

---

<sup>2</sup> Following the hearing on the merits of this appeal, the Taxpayer (as a co-lead petitioner) filed a petition for reassessment (based on the tax year 2009 Town-wide reassessment) as authorized in a separate statute: RSA 71-B:16, IV. (See Town of Randolph, BTLA Docket No.: 26074-11RA.) That reassessment docket is still pending.

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).

In this appeal, the Taxpayer contends the assessment should be abated further to \$165,000 (as itemized in Taxpayer Exhibit No. 2, Section 7, p. 3), a value approximately 15% less than the estimate of his own appraiser in the Androscoggin Appraisal. That appraisal was prepared for a different stated purpose (to “assist in estate planning”), estimated a value of \$190,000 in August, 2005 and was never updated. The effective date of that appraisal was almost four years before the assessment under appeal, at a time when property values were still rising. The Taxpayer contends the \$190,000 estimated value should be discounted by 15% because of the “recession” ( $\$190,000 \times 0.85 = \$161,500$ ), but this contention is not credible.

In this regard, the Town noted the Taxpayer presented no evidence to support his assumption of a continuous decline in market value between the August, 2005 appraisal date and the assessment date (April 1, 2009). The board agrees. The economic downturn experienced in the global and national financial and real estate markets did not begin to surface until the fall of 2008 and only impacted housing prices sometime thereafter. If a modest (6% per year) appreciation rate is applied for four years (from 2005 through 2008) before the 15% percentage downward “recession” adjustment proposed by the Taxpayer due to the “recession,” then a time-adjusted estimate of value based on the Androscoggin Appraisal, assuming it could be accepted at face value, would be above \$190,000, not below it, and would be supportive of the assessment under appeal, not proof of disproportionality.

Aside from relying primarily on the Androscoggin Appraisal, the Taxpayer cited several other property sales in the Town (listed and discussed in Taxpayer Exhibit No. 7, as well as his correspondence), but those sales, on the record presented, are of little aid in determining whether

the Property was disproportionately assessed. The evidence reflects one was an “estate” sale (Mr. Hatch died in 2009 and his house was sold by heirs 2½ years later) and one was a “quick sale” (Mr. Baldwin moved to a retirement community, put his house on the market and sold it quickly because his children did not want to keep the house). A third sale (Phinney) was a private sale to an abutter, never listed with a broker or otherwise exposed to the open market.

In presenting these sales, the Taxpayer made no adjustments for time even though one sale (Hatch) occurred in 2011 and another (Baldwin) occurred in 2010. There is some evidence that property values declined after 2009. For example, the Town’s median ratio climbed from 97% in 2009 to 111.3% in 2010, and increasing median ratios are often evidence of a decline in property values. Therefore, even if the 2010 and 2011 sales were assumed to be arm’s-length transactions and at market value, their sales prices should have been adjusted upwards to reflect a decline in market values after the April 1, 2009 effective date of assessment.

The board can give no weight to the Taxpayer’s evidence that one assessment may have increased at a greater or lesser percentage than another assessment. The very purpose of a reassessment is to correct any errors or omissions that may have impacted prior assessments and to update values to reflect any changes in the market.

It is well established that proportionality depends on the market value of the Property considered as a whole, rather than any one component that contributes to that value, such as the land and its associated views or the building and its structural attributes, because this is how the market determines values. Especially in older houses, specific attributes (such as whether the house was built on piers or has a more conventional foundation) may differ without necessarily providing proof of a lesser overall market value. In other words, even if a Taxpayer wishes to challenge only selected attributes or components of an assessment, the Taxpayer still has the

burden of proving the aggregate value of the Property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007) (“the board correctly found that ‘[a]ny property tax assessment appeal based on disproportionality requires a review of the market value of the property in its entirety . . .”).

In response to the Taxpayer’s presentation, the Town noted much of it involved questions and disagreements regarding the Town’s methodology in arriving at the 2009 assessments. The supreme court has ruled, however, that even where a taxpayer can show flaws in a Town’s assessment methodology, that is not sufficient to carry the burden of proof required to establish disproportionality and entitlement to a tax abatement. See Porter v. Town of Sanbornton, 150 N.H. at 368-99.

For all of these reasons, the appeal is denied.

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. 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

---

Michele E. LeBrun, Chair

---

Albert F. Shamash, Esq., Member

---

Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John T.B. Mudge, 25 Lamphire Hill, Lyme, NH 03768, Taxpayer; Chairman, Board of Selectmen, Town of Randolph, 130 Durand Road, Randolph, NH 03593; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 6/11/12

---

Anne M. Stelmach, Clerk