

Maureen Bacon

v.

Town of Enfield

Docket No.: 24850-09PT

DECISION

The “Taxpayer” appeals the “Town’s” 2009 assessment of \$468,500 (land \$271,300; building \$197,200) on Map 14/Lot 11, a single family property on 0.29 acres (the “Property”). 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, represented by her husband, Charlie Bacon, argued the assessment was excessive because:

(1) during a town-wide revaluation in 2009, the assessment of the Property increased 67% while an analysis of four comparable waterfront properties indicated their assessments increased from 13% to 40% (See Taxpayer Exhibit No. 1);

- (2) an analysis of five comparable properties, all in very close proximity and of a similar size to the Property, indicates an average land assessment of \$168,100, approximately \$100,000 less than the Property's land assessment of \$271,300;
- (3) an appraisal prepared as of February 13, 2007 by Mr. Peter Bride of The Stanhope Group, LLC (the "Stanhope Appraisal" included in Taxpayer Exhibit No. 1) estimates a market value of \$425,000 for the Property with a contributory land value of \$150,000;
- (4) several newspaper articles and market trend reports state that residential sale prices in Enfield have declined since the completion of the Stanhope Appraisal and therefore the market value of the Property as of April 1, 2009 is somewhat below \$425,000; and
- (5) the market value of the Property is \$365,300, based on the average land value arrived at in the Taxpayer's analysis plus the current assessed value of the improvements ($\$168,100 + \$197,200 = \$365,300$) and an abatement should be granted.

The Town argued the assessment was proper because:

- (1) the Town performed a revaluation in 2009 and a prior revaluation in 2004;
- (2) the Taxpayer's assessment is consistent with the assessments of other waterfront properties in the Town, which are based on size and are further adjusted for other physical characteristics, including amount and quality of waterfront, topography and other factors (See Municipality Exhibits A and B);
- (3) the assessments of some waterfront properties in Town increased (on a percentage basis) more than others, as there may have been disproportionality between the assessment of seasonal and year round lots prior to the 2009 revaluation;
- (4) the Stanhope Appraisal should be given little weight as it relied upon four comparable sales, only one of which is located in the Town and all of which are on different water bodies with

significantly different physical characteristics and land values and because it estimated a market value more than two years prior to the effective date of the assessment; and

(5) the Taxpayers failed to prove disproportionality and their appeal should be denied.

The parties agreed the level of assessment was 94.7% in tax year 2009, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet her burden of proving disproportionality. The appeal is therefore denied.

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 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). None of the arguments and evidence for a tax abatement presented by the Taxpayer satisfies her burden of proving disproportionality for several reasons.

First, the Taxpayer argued the assessment increased as a result of the 2009 revaluation at a greater percentage than other similarly properties. The board finds such evidence does not

meet her burden of proving the Property is disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. Municipalities must examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The Town's 2009 revaluation was intended to comply with RSA 75:8 and to remedy past inequities. Thus, the new assessments can be expected to vary between properties, both in absolute numbers and in percentages. Consequently, the board could give no weight to the Taxpayer's arguments regarding differential percentage increases.

Second, the Taxpayer argued the land component of the assessment on the Property is approximately \$100,000 higher than the land assessments of five comparable properties. (See Taxpayer Exhibit No. 1.) Even if a Taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, 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 Town did not stipulate to the value of the improvements. Therefore, the Taxpayer had the burden of showing how, if at all, the total assessment was disproportional.

Finally, the board could give little weight to the Stanhope Appraisal for a number of reasons. The four comparable sale properties were located in Enfield, Springfield, New London and Newbury and significant adjustments for location were made. These adjustments were not adequately supported or explained in the appraisal and the appraiser did not attend the hearing to explain these adjustments, some of which were unusually large. The four sales occurred between June 2005 and November 2006, or between 29 and 46 months prior to the April 1, 2009

assessment date. Both the Taxpayer and Town agreed the real estate market had undergone significant changes between the dates of those sales and the April 1, 2009 assessment date.

For all of these reasons, the board finds the Taxpayer did not meet her burden of proving disproportionality and the appeal is therefore 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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Maureen Bacon, 194 Crystal Lake Road, Enfield, NH 03748, Taxpayer; and Chairman, Board of Selectmen, Town of Enfield, PO Box 373, Enfield, NH 03748.

Date: 3/12/12

Anne M. Stelmach, Clerk