

Bruce Hudson and Renate Kannler Trusts

v.

Town of New London

Docket No.: 25783-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$476,500 (land \$172,300; building \$304,200) on Map 059/Lot 013/009, 64 Conifer Lane, a single-family home on 0.55 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality.

Id. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Taxpayers purchased the lot in 2002 and moved into their newly constructed home in 2003, located in the Great Pines subdivision which consists of 22 homes;

(2) the assessed value of the land component of the Property increased by 123% in the 2010 revaluation (from \$77,400 to \$172,300, a “delta” of \$94,900, or roughly 123%; see Taxpayer Exhibit No. 2);

(3) assessed land values in the Great Pines subdivision, including the Property, increased at a higher percentage rate than elsewhere in the Town (see Taxpayer Exhibits No. 1 and 2); and

(4) as a result, the Taxpayers’ “burden” increased more than others in the Town and the assessment should be abated.

The Town argued the assessment was proper because:

(1) the Town performed a revaluation in tax year 2010, and recognizes the Taxpayers’ frustration and has apologized to the property owners in the Great Pines subdivision for any lack of communication, but believes the assessments are proportional (see Municipality Exhibit A);

(2) during the revaluation, the Town used a “land residual technique” and sales data (using three “good sales”) to arrive at the land component of values and those values were consistently applied throughout the Great Pines subdivision and in other neighborhoods;

(3) the location is very desirable and is well situated, set back from the road and convenient to all town facilities; and

(4) based on the sales utilized during the revaluation, as well as several sales that occurred subsequently, the assessment was proportional and the appeal should be denied.

The parties agreed the level of assessment was 96.1%, the median ratio calculated by the department of revenue administration.

Board’s Rulings

Based on the evidence presented, the board finds the Taxpayers failed to prove the assessment for tax year 2010 was disproportional. The appeal is therefore denied for the following reasons.

Assessments must be based on market value, as prescribed in RSA 75:1. Proportionality is determined by focusing on market value adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). To prevail in this appeal, the Taxpayers had the burden of establishing the market value of the Property was below the equalized value reflected in the abated assessment. (\$476,500 assessment divided by 96.1% level of assessment = \$495,800, rounded, indicated market value as of April 1, 2010 assessment date.)

The Taxpayers did not present any credible evidence of the Property's market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

When asked during the hearing, Mr. Hudson stated that if he were to have offered the Property for sale as of April 1, 2010, he would have listed it for "\$500,000" and this opinion was based on "the recent sales in the neighborhood." Mr. Hudson's \$500,000 opinion is supportive of the equalized assessed value of \$495,800.

The Taxpayers' primary contention is the land component of their assessment increased from \$77,400 to \$172,300, an increase of 123%, during the Town-wide revaluation in 2010. The total assessment increased from \$330,900 to \$476,500, an increase of 44%. The Taxpayers argued their assessment increased at a greater percentage than other properties.

The Town's assessor testified at the hearing and presented evidence (in Municipality Exhibit A) which indicated properties in the Great Pines subdivision were substantially underassessed (compared to the assessments of properties in other neighborhoods) for several

years prior to the Town-wide revaluation in 2010. Her analysis included three sales that occurred in 2008 with sale prices well below the assessed values. This evidence may explain why assessments increased by a greater percentage for properties in the Great Pines subdivision in 2010. She also presented evidence of a sale that occurred in August, 2010 (21 Conifer Lane, on the same street as the Property) for \$528,000, which is supportive of the Property's assessment.

When the Town undertakes a full revaluation, as it did in tax year 2010, it is not uncommon for assessments to rise on certain properties and fall on others or for values to increase or decrease at different rates, both in absolute numbers and in percentages, since the objective of this process is to correct for any prior discrepancies and to update values based on current market information. Cf. Appeal of Town of Sunapee, 126 N.H. at 217-19.

In addition, simply calculating a percent change in assessed values of other properties throughout the Town and comparing that percentage to the assessment of the Property is not probative of disproportionality. See Peterson v. Town of Deerfield, BTLA Docket No. 25616-10PT (September 25, 2012), where the board stated (at p. 3):

[E]mphasis and reliance on comparing percentage changes in the assessments of one component (land) on . . . other properties, rather than on market value evidence, is misplaced. Neither percentage increases nor decreases over prior assessments are, in and of themselves, probative on the issue of disproportionality. See, e.g., Bacon v. Town of Enfield, BTLA Docket No. 24850-09PT (March 12, 2012) at pp. 3-4 (“[N]ew assessments can be expected to vary between properties, both in absolute numbers and in percentages. Consequently, the board could give no weight to the [t]axpayer's arguments regarding differential percentage increases.”).

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

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: Bruce Hudson and Renate Kannler Trusts, 64 Conifer Lane, New London, NH 03257, Taxpayers; and Chairman, Board of Selectmen, Town of New London, 375 Main Street, New London, NH 03257.

Date: January 11, 2013

Anne M. Stelmach, Clerk