

John T.B. Mudge

v.

Frederic and Sandra Wier and Town of Randolph

Docket No.: 26075-11OS

DECISION

On May 24, 2012, the board held a noticed hearing in this RSA 71-B:16, I appeal filed by John T.B. Mudge.¹ Based on the evidence presented, the board finds Mr. Mudge did not meet his burden of proving property owned by Frederic and Sandra Weir, the “Wier Property” (Map 10, Lot 25, 278 Randolph Hill Road), was improperly or unequally assessed by the “Town” in tax year 2011. The appeal is therefore denied.

Present at the hearing with Mr. Mudge was his brother (G.A. Mudge). Also present were Frederic and Sandra Wier, H. Bernard Waugh, Jr., Esq. of Gardner Fulton & Waugh PLLC (the Town’s Attorney) and Gary Roberge of Avitar Associates of New England, Inc. (the Town’s contract assessor), Michelle and Paul Cormier and John Turner. (Mr. Wier, Ms. Cormier and Mr. Turner are the Town’s Board of Selectmen.) The board’s review appraiser, Cynthia L. Brown, CNHA, who prepared a May 4, 2012 report (“Report”) of her

¹ The board also heard a companion appeal, Mudge v. Michelle and Paul Cormier and Town of Randolph, BTLA Docket No. 26076-11OS (the “Cormier Appeal”), on the same date. The parties agreed the board could take notice of the evidence presented in the Cormier Appeal.

investigation in a separate Town-wide reassessment proceeding (BTLA Docket No. 26074-11RA), was also present at the hearing and was called to testify by the Town.

In this appeal, Mr. Mudge contends the tax year 2011 assessment of the Wier Property should be increased by \$25,900. He calculated this amount at the hearing based on his belief the Town should have applied a depreciation factor of 8%² (rather than 22%) to the estimated \$185,103 “Cost New” of the building shown on the assessment-record card. This calculation, if applied, increases the contributory value of the building from \$144,400 to \$170,300 (rounded) and the total assessment (building plus land and features values) from \$209,000 to \$234,900.

At the hearing, Mr. Mudge argued, based on RSA 71-B:16, I, that it was improper and unequal³ for the Town to apply a 22% depreciation factor to a house originally constructed in 1889 that was substantially renovated some years ago (in the period from 1996 to 2000). There is no dispute the Wiers moved the house 100 feet further back from the roadway “onto a full concrete foundation.” They testified they made this and other changes gradually (over a 22 year time span) in a “largely do-it-yourself” manner.⁴ These physical changes to the Property were noted on prior assessment-record cards and resulted in substantial increases in the assessed value of the building, from \$11,100 in 1980 to \$144,400 in 2009-2011. (See Taxpayer Exhibit No. 1.)

Mr. Mudge contends the Town, in order to arrive at a proportional assessment for tax year 2011, should have treated the building as having an effective age of 15 years and should

² In his complaint filed with the board on November 18, 2011 (the “Mudge Complaint”), Mr. Mudge argued for application of a lower 6% depreciation factor, rather than 8%.

³ He made no claim the assessment was fraudulent or illegal, the two other grounds mentioned in RSA 71-B:16, I.

⁴ These facts are detailed in the Wiers’ December 15, 2011 response to the Mudge Complaint on file with the board. (A copy of this letter, the “Wiers’ Response,” is also included in Taxpayer Exhibit A, Tab W-3.)

have applied a depreciation factor of 8%, the value indicated in the “Standard Age Only Depreciation Chart” included in the Town’s tax year 2009 reassessment manual (copy included in Taxpayer Exhibit A, Tab W-2). The board does not agree.

As the Town’s contract assessor (Mr. Roberge) explained at the hearing, the Wier Property was assessed properly with a 22% depreciation factor because it was an old house in “good” condition, not a newer (15 year old) house. The board has reviewed the Wiers’ Response and the photos submitted of their house (in Taxpayer Exhibit No. 2). It is clear from this evidence that the Wier Property has some features common in older homes that many potential buyers may not value as highly as those in a more recently constructed house. These features include, but are not limited to, very old (circa 1889) window frames, exposed floor joists, and small bedrooms without closets on the first floor. These are features that remain in the Wier Property even after the renovations discussed by Mr. Mudge.

The Town applied the depreciation principles stated in the Marshall & Swift “Residential Cost Handbook,” a standard and widely applied construction cost estimator. (The relevant pages from this publication are included in Taxpayer Exhibit A, Tab W-2.) In the Town’s chart, 22% is the depreciation indicated for a 125 year old house in “good” condition, while 8% is the depreciation shown for a 15 year old house in “good” condition. This evidence reflects the fact that depreciation, as it impacts market value, is not necessarily a straight line process correlated exactly with the physical age of a building. It was therefore reasonable for the Town to conclude the market would place less value on an older, partially renovated house than a newer, professionally constructed house with the features expected in a house of that type.

The board finds there was no evidence the Town applied depreciation to the Wier Property in a manner different than any other property having the same or substantially similar physical attributes. The Town cited Ms. Brown's Report (p. 12), also confirmed by her testimony at the hearing, that the Town applied depreciation in a generally consistent manner. The weight of the evidence presented in this appeal supports the conclusion the Town's methodology in estimating and applying depreciation was consistently applied throughout the municipality and was reasonable. A consistent assessment methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-190 (1982).

The Town further argued the legal test for disproportionality (the underassessment of the Wier Property alleged by Mr. Mudge in this appeal) is market value, not whether the Town could have used a different assessment methodology. (See the Town's "Brief Memorandum of Law" ("Memorandum") which discusses the Taxpayer's burden of proving disproportionality and the lack of any market value evidence from Mr. Mudge; see also Porter v. Town of Sanbornton, 150 N.H. 363 (2004), and Hoffman v. Town of Gilford, et al., BTLA Docket No. 15023-94OS (April 2, 1996), cited by the Town in support of these principles).

In addition, the assessment of each property as a whole must be the basis of a claim of disproportionality, not any single component of the assessment such as the depreciated building value. See, e.g., Appeal of Walsh, 156 N.H. 347, 355-56 (2007) (market value of entire property, not just one component of value, must be established to sustain a claim of disproportionality).

In testing proportionality, market value is adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. at 368. The level of assessment in

the Town in tax year 2011 was 111%, the median ratio calculated by the department of revenue administration. Mr. Mudge presented no market value evidence of any kind to show the Wier Property was underassessed at \$209,000, which equates to a market value indication of \$188,300, rounded ($\$209,000 / 111\%$).

Instead of presenting market value evidence to support his claim the Wier Property was disproportionally assessed, Mr. Mudge focused his presentation on questions and critiques of the Town's methodology and its application of depreciation. After considering the photographs and other evidence submitted, the board finds there is no basis to conclude the market value of the Wier Property was greater than \$188,300 in tax year 2011 so as to make the assessment disproportional.

For all of these reasons, the board finds Mr. Mudge failed to meet his burden of proving disproportionality. His appeal of the assessment on the Wier Property is therefore denied.

In addition to seeking denial of the appeal, the Town's Memorandum (at pp. 6-7) further claims Mr. Mudge "should be required to pay the defendants' costs and attorney's fees." In this appeal, the Town hired an attorney to represent its own interests and not the Wiers. The Wiers represented themselves and incurred no filing costs or attorney fees of their own and Mr. Roberge testified he was appearing to defend the value of the assessment on the Wier Property at 'no charge.'

While the Town questions Mr. Mudge's "motivation" for filing this appeal (accusing him of attempted 'coercion' of the selectmen), he disputes the Town's accusations. Mr. Mudge explained he filed this appeal (and the Cormier Appeal) only after a hearing on an

RSA 71-B:16-a property tax appeal of his own property (Mudge v. Town of Randolph, BTLA Docket No. 24795-09PT) led him to discover his right to do so under RSA 71-B:16, I. The record reflects diligent and extensive investigation and research by Mr. Mudge which resulted in some basis for questioning the Town's assessment practices.

A party seeking costs and attorney's fees bears the burden of proving it is entitled to recover them and a tribunal has discretion whether to award them. Cf. White v. Francoeur, 138 N.H. 307, 310 and 313 (1994) (reversing award of attorney's fees and costs to municipality). Although Mr. Mudge did not meet his own burden of proving the Wier Property was disproportionately assessed in tax year 2011, the board finds the Town has not met its burden of proving the appeal was "frivolously filed and maintained" so as to justify an award of costs and attorney's fees. (Cf. RSA 71-B:9 and Tax 208.02(b).)

In summary, the board denies Mr. Mudge's appeal of the tax year 2011 assessment on the Wier Property and denies the Town's request for costs and attorney's fees.

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; Frederic and Sandra Wier, 278 Randolph Hill Road, Randolph, NH 03593; Michelle and Paul Cormier, PO Box 63, Gorham, NH 03581; H. Bernard Waugh, Jr., Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766-1727, counsel for the Town; Town of Randolph, Chairman, Board of Selectmen, 130 Durand Road, Randolph, NH 03593; and a courtesy copy to Gary Roberge and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date:

Anne M. Stelmach, Clerk