

John T.B. Mudge

v.

Michelle and Paul Cormier and Town of Randolph

Docket No.: 26076-11OS

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 Michelle and Paul Cormier, the “Cormier Property” (Map R11, Lot 12, 62 Woodspring 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 Michelle and Paul Cormier, 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), and Frederic and Sandra Wier and John Turner. (Ms. Cormier, Mr. Wier 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 investigation

¹ The board also heard a companion appeal on the same date (Mudge v. Frederic and Sandra Wier and Town of Randolph, BTLA Docket No. 26075-11OS (the “Wier Appeal”). The parties agreed the board could take notice of the evidence presented in the Wier Appeal.

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 Cormier Property should be increased by \$35,000 (from \$312,900 to \$347,900, an increase of approximately 11%). He calculated this amount based on his belief the Town should increase the view factor from \$40,000 to \$75,000 to match the view factor applied to one other property in the Town (the “Purcell Property,” Map U2, Lot 12). According to Mr. Mudge, the Cormier Property and the Purcell Property are both described on the Town’s assessment-record cards as having a “60 degree view of Mts. Madison and Adams” and therefore should have the same \$75,000 view factor. (See the November 18, 2011 complaint, p. 2.)

At the hearing, Mr. Mudge argued, based on RSA 71-B:16, I, that it was improper and unequal² for the Town to assign a lower view factor to the Cormier Property than to the Purcell Property and the Town should increase its tax year 2011 assessment of the Cormier Property. The board does not agree.

Mr. Roberge testified under oath that he personally inspected and estimated the contributory value of the view for each property in the Town, including the Cormier Property and the Purcell Property. In this process, he used “degree” (angle of width of view) as only one of several criteria affecting the view factor shown on the assessment-record card. In addition to degree, Mr. Roberge testified he took into account “depth” and “height” factors, to estimate how the market would value differing views. The Cormiers noted the assessment-record card on the Purcell Property is different in that it also describes a view of King Ravine (as well as

² He made no claim the assessment was fraudulent or illegal, the two other grounds mentioned in RSA 71-B:16, I.

Mount Madison and Mount Adams) and the Purcell Property is higher in elevation than the Cormier Property.³

In the board's experience, the contributory value of a view in the market can also be influenced by other factors, such as foliage coverage and other view obstructions (roads and utility lines, for example). The evidence presented (including Municipality Exhibit C and Taxpayer Exhibit No. 1) casts doubt on Mr. Mudge's contention that there is a "single view" in the Town, deserving of a uniform value, not a multiplicity of views that could add differing contributory values to specific properties.

The Town cited Ms. Brown's Report (p. 10), also confirmed by her testimony at the hearing, that the Town applied the contributory value of views in a generally consistent manner and the values assigned seemed reasonable based on the views she observed from each property during her inspections in early 2012.⁴ (See also Municipality Exhibit B, which includes a description of how views were assessed and a compilation of the view factors assigned to each property.) The weight of the evidence presented in this appeal supports the conclusion that the Town's methodology in assessing contributory values was not unreasonable and was applied in a consistent manner throughout the municipality. 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 Cormier Property alleged by Mr. Mudge in this appeal) is market value, not whether the

³ These and other differences are described in the Cormiers' December 16, 2011 response to the Mudge Complaint. (A copy of this letter, the "Cormier Response," is also included in Taxpayer Exhibit A, Tab C-3.)

⁴ Ms. Brown did also note that "[t]he description of the various views appeared confusing" and gave some examples of this in the Report (pp. 10-11) from her review of the Town's assessment-record cards. These examples, however, did not alter her conclusions regarding consistent methodology.

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, 369 (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 land component and the view factor associated with it. 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. 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 Cormier Property was underassessed at \$312,900, which equates to a market value indication of \$281,900, rounded ($\$312,900 / 111\%$).

Instead of presenting market value evidence to support his claim the Cormier Property was disproportionally assessed, Mr. Mudge focused his presentation on questions and critiques of the Town's methodology and its application of view factors. After considering the photographs and other evidence submitted, the board finds there is no basis to conclude the market value of the Cormier Property was greater than \$281,900 in tax year 2011 so as to make the assessment disproportional.

The board finds a simple comparison to the view factor assigned to one other property (Purcell) is not probative of disproportionality of the Cormier Property, not only for the reasons discussed above, but also because Mr. Mudge presented no evidence to establish the Purcell Property was proportionally assessed in tax year 2011. Without such evidence, and keeping in mind that each assessment consists of components besides the view factor, it is not possible to determine whether the specific factor assigned may be too high for one property or too low for the other. Cf. Appeal of Cannata, 129 N.H. 399, 401 (1987) (possible disproportional assessment of another property (recognizing “the assessment method underassesses some properties and overassesses others”) is not grounds for changing an assessment).

Finally, while the board could follow Mr. Mudge’s thought process in comparing the view factors assigned to these two properties, his arguments ignore two related legal principles that are important in establishing whether an assessment is disproportional and requires adjustment. First, simply comparing two assessments cannot be the basis for determining whether proportionality exists or not; rather, assessing properties relative to market values is the true test of proportionality. See RSA 75:1; and Appeal of Andrews, 136 N.H. 61 (1992). Second, to carry his burden, Mr. Mudge was required to show the assessment of the Cormier’s entire estate, in this case consisting of land and building values, is disproportionate, not just the estimated contributory value of the view. See Appeal of Sunapee, 126 N.H. 214 (1985).

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 Cormier 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 Cormiers. The

Cormiers 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 Cormier 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 Wier Appeal) only after a hearing on an RSA 71-B:16-a property tax appeal of his own property (John T.B. 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 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 Cormier 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 Cormier 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; Michelle and Paul Cormier, PO Box 63, Gorham, NH 03581; Frederic and Sandra Wier, 278 Randolph Hill Road, Randolph, NH 03593; 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: July 17, 2012

Anne M. Stelmach, Clerk