

Susan E. Marquis

v.

Town of Brookfield

Docket No.: 26431-11PV

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” denial of her abatement application for tax year 2011 based on poverty and inability to pay. The “Property,” Map 18/Lot 21, 75 Lyford Road, is a single-family home on five acres and is assessed at \$224,100 (land \$56,300; building \$167,800). For the reasons stated below, the appeal is granted.

The Taxpayer has the burden of establishing, by a preponderance of the evidence, she was entitled to a tax abatement on the grounds of poverty and inability to pay. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994); and Ansara v. City of Nashua, 118 N.H. 879 (1978). The board finds the Taxpayer met her burden of proving the Town erred in denying the abatement for tax year 2011.

The Taxpayer, speaking for herself with the assistance of her neighbor and representative Pamela Peper Frazier, argued the Property was entitled to a full tax abatement on the grounds of

poverty and inability to pay based on the following facts:

- (1) the Taxpayer purchased the Property in 1997 and has resided there since that time, paying her taxes and other financial obligations;
- (2) her financial condition deteriorated due to a number of setbacks, including a job accident in 2007 which impacted her health, kept her from returning to work and qualified her for disability (“SSDI”) payments, and her unpaid medical and other bills forced her into bankruptcy;
- (3) the Taxpayer is raising two grandsons and has full legal custody of them due to the death of her daughter;
- (4) a fire on the Property in 2012 resulted in the destruction of many of the Taxpayer’s documents due to both fire and water damage, making her unable to provide more documentation to the Town;
- (5) since the fire, she has lived in a borrowed “trailer” on the Property with her two grandsons, while repairs were made on the house slowly over time (largely with donated materials and labor and a small “Farm Aid” loan);
- (6) the Town’s tax collector has acted improperly in not removing interest and penalty charges from prior tax years;
- (7) the Town did grant abatements based on poverty and inability to pay in prior years, but not in 2011; and
- (8) the appeal should be granted.

The Town argued the denial of the requested tax abatement was proper because:

- (1) the Taxpayer managed to pay her property taxes for 2006 through 2009 relying on her own means and the Town abated her 2010 taxes due to poverty and inability to pay;

- (2) the Town Selectmen denied the 2011 abatement application because they felt the Taxpayer failed to provide sufficient documentation (submitting “incomplete financial information”) to demonstrate her claim of poverty and inability to pay;
- (3) a second individual (Malcolm W. Cook) is named with the Taxpayer as a “borrower” on certain financing documents on the Property as shown in Tab D of Municipality Exhibit A;
- (4) it would be “unfair” to ask other taxpayers to subsidize the Taxpayer’s desire to remain in the Property; and
- (5) the appeal should be denied.

Board’s Rulings

Based on the evidence and arguments presented, the board finds the Taxpayer met the burden of proving the Town should have granted her tax abatement application for tax year 2011 under the established standards governing poverty and inability to pay. The appeal is therefore granted.

The board has carefully reviewed all of the evidence, including the abatement application submitted to the Town which contains an “ATTACHMENT B.” (See Municipality Exhibit A, Tab A.) This document provides detailed explanations regarding the Taxpayer’s personal circumstances and why she meets the standards for a tax abatement based on poverty and inability to pay. The board finds her testimony and the many financial and other details she provided to be credible and well supported by the record.

The board also considered the testimony of the Town’s witnesses and all of the exhibits presented at the hearing, along with the financial and other details discussed in the “Hearing Memorandum” filed by the Town’s attorney. In the Hearing Memorandum, the Town provides an explanation of why it denied the Taxpayer’s abatement request for tax year 2011, despite

granting a similar request for tax year 2010. While the Town correctly cites Ansara, the leading supreme court case discussing poverty and inability to pay as a ground for a tax abatement, the board does not agree with its application of these standards. (The Ansara standards are also mentioned in the appeal form (p. 2) which the Taxpayer filled out and filed with the board.)

In brief, the board finds the rationales presented by the Town to support the denial of a tax abatement for tax year 2011 do not withstand scrutiny. For example, the Town claims the Taxpayer did not prove she could not “refinance” the Property to pay her taxes. In this regard, the Town acknowledges the Property had an equalized market value of \$224,774 and an outstanding mortgage of \$212,257; in the board’s experience, these facts would make refinancing by a reputable lender extremely unlikely because of basic underwriting standards such as an adequate loan-to-value ratio. The Town failed to present credible evidence to establish the refinancing alternative would have been either feasible or reasonable. (See Hearing Memorandum, pp. 2-3.) The board also finds the Taxpayer presented credible explanations regarding the line of credit she previously obtained and reasonable responses to all of the other issues raised by the Town, including why another individual (Mr. Cook) who does not live on the Property and has no ownership interest in the Property was not removed from the mortgage documents.

Further, the board does not agree with the Town’s apparent assumption that the existence of rental housing outside of the Town is a reasonable alternative under the Ansara standards. (See the rental listings from Farmington, Wolfeboro and Sanford, Maine presented by the Town in Municipality Exhibit A, Tab G.) This argument ignores the costs and risks associated with

selling the Property and moving to a rental apartment.¹ More importantly, the board does not read Ansara to require any taxpayer to move to another town (or to another state for that matter). On the facts presented, a move into rental housing would, in all likelihood, require the Taxpayer to take her two grandsons, whom she raises and has legal custody of, out of the local schools. This outcome would impose a further hardship and would be unreasonable.

Finally, while this appeal involves only the tax year 2011 assessment on the Property, the board has noted the Taxpayer's claims regarding the Town's tax collection process: these claims include alleged improper allocations of her payments for 'interest and fees in 2010' when the Town abated the assessment for that year based on property and inability to pay. (Cf. Taxpayer Exhibit Nos. 2-5.) The record is incomplete and in dispute regarding these claims, but it is not unreasonable to encourage the parties to resolve them in a timely manner.

For all of the reasons set forth above, the appeal is granted.

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

¹ Deducting a standard sales commission from the full 2011 equalized market value, not to mention other possible closing costs, would result in sale proceeds that would be less than the mortgage balance, leaving the Taxpayer with no money to pay the taxes. It is also not clear the Taxpayer could sell the house for 100% of the equalized market value of the 2011 assessment.

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, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Pamela Peper Frazier, 103 Lyford Road, Brookfield, NH 03872, Taxpayer's Representative; Susan E. Marquis, 75 Lyford Road, Brookfield, NH 03872, Taxpayer; Laura A. Spector-Morgan, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246, counsel for the Town; Chairman, Board of Selectmen, Town of Brookfield, 267 Wentworth Road, Brookfield, NH 03872; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 3/21/14

Anne M. Stelmach, Clerk