

Jon and Nancy Bryan

v.

Town of Hillsborough

Docket No.: 26718-12PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2012 abated assessment of \$150,536 [land \$41,536 (including an assessment of \$1,536 on 37 acres subject to a conservation easement); building and other improvements \$109,000] on Map 6/Lot 50, 240 North Road, a single family home on 38 acres (the “Property”). [The Taxpayers also own, but are not appealing, five other lots (Map 6, Lots 18, 20, 49, 50-1 and 53) and the parties do not dispute the proportionality of those assessments.] For the reasons stated below, the appeal for further abatement on the Property is granted.

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 carried this burden.

The Taxpayers argued the assessment on the Property was excessive because:

- (1) the very poor condition of the house and barn is detailed in the presentation included in Taxpayer Exhibit No. 1 and the photographs in Taxpayer Exhibit No. 2;
- (2) the house has so much “mold, rot, plumbing, heating and vermin issues” that the most cost effective solution is demolition (at a cost of \$25,000 or more);
- (3) even if, as an alternative to demolition, full remediation could be performed (which is likely neither possible nor cost effective) there could still be “stigma” problems associated with the Property due to these issues that will adversely impact value;
- (4) the Property is overassessed in comparison to other neighboring properties;
- (5) a tax year 2011 appeal (BTLA Docket No. 26154-11PT) was settled for an equalized value of “\$120,724,” but when the Taxpayers agreed to this settlement, they did not know the full extent of the uninhabitable condition of the Property; and
- (6) the assessment should be further abated to \$81,193, based on a land value of \$25,000 for the one acre and a residual building and other improvements value of \$56,193.

The Town argued the assessment, as already abated, was proper because:

- (1) the Town performed a revaluation in 2012 and therefore the 2011 settlement value is “not valid” (did not carry forward) for 2012;
- (2) the Town made reasonable adjustments during the abatement application process to the 2012 assessment, as reflected on the assessment-record card (Municipality Exhibit B);
- (3) the Taxpayers purchased the Property in November, 2008 for \$310,000 after performing a home inspection which should have disclosed the condition of the house and barn;

- (4) the Town's assessor performed an interior inspection in 2012 which indicated that remediation would be "fairly simple" and the Town is not persuaded that the problems testified to by one of the Taxpayers are unusual for an "antique" home constructed prior to 1800;
- (5) the Taxpayers' comparables are from a different "zone" or neighborhood and one neighboring property relied upon by the Taxpayers ("320 Concord End Road," Map 6, Lot 33) is inferior in quality (more like an "outbuilding" than a house) and has only been used for "storage" for the past few years;
- (6) the photographs submitted as part of Municipality Exhibit A demonstrate that the house and the barn are in better condition than testified to by the Taxpayers; and
- (7) no further abatement is warranted and the appeal should be denied.

The parties did not dispute the level of assessment was 103.3% in tax year 2012, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence and arguments presented, the board finds the Taxpayers satisfied their burden of proving the Property was disproportionately assessed in tax year 2012 and that the assessment should be abated to \$114,436. The appeal is therefore granted for the following reasons.

The Property was purchased in November, 2008 for \$310,000. However, this transaction involved the purchase of a total of approximately 68 acres of land, including another parcel (Map 6, Lot 53, consisting of 30.85 acres) assessed separately from the Property. [See listing sheet attached to the 2012 abatement recommendation in the board's file and the assessment-record card ("ARC") for Map 6, Lot 53.]

The Taxpayers contend the one acre of land not subject to conservation easements is overassessed at \$40,000 and the house, barn and other improvements are overassessed at \$109,000. They do not appear to dispute the \$1,536 assessment on 37 acres subject to conservation easements. (See Municipality Exhibit B, the ARC for the Property.)

Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). To determine whether an abatement is warranted, the board considers and weighs the market value 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.”)

On the facts presented, the board does not agree with the Taxpayers that the one acre of land was disproportionately assessed at \$40,000. This land is part of a larger lot consisting of 38 acres, with the remaining 37 acres subject to conservation easements, not to mention the other 30.85 acre lot (Map 6, Lot 53) they purchased at the same time. The ad valorem value of the one acre is likely enhanced by the added privacy and seclusion afforded by its location abutting conservation land and the additional undeveloped land. According to the listing sheet for this purchase, the Property is in a good location within “1 mile of Historic Hillsboro Center.”

The Taxpayers did not present an appraisal or any sales data that would support a lower value for the one acre of land. Instead, they simply relied on comparative assessments to several other properties in the neighborhood. The board is unable to place undue weight on these comparisons. See Appeal of Cannata, 129 N.H. 399, 401 (1987) (the possible underassessment of other properties does not prove the overassessment of the property under appeal). The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id. In addition, the Town provided reasonable explanations as to why the assessments on those properties differed. Consequently, the board finds the Taxpayers failed to prove the land was disproportionately assessed at a total of \$41,536.

With respect to the house and barn, however, the board finds the Taxpayers did present credible evidence of overassessment. The ARC indicates the Town considered these structures to be in “good” condition for their age, applying 29% depreciation, 15% for mold, 10% for functional and 5% for economic depreciation (a total of 59%). Using its judgment and experience, and weighing the extensive testimony and documents presented by one of the Taxpayers who has firsthand knowledge of the mold, rotting and other deteriorating conditions, the board finds these adjustments are not sufficient to reflect the very poor state of the house and barn. In light of this evidence, the board finds a total depreciation factor of 75% (rather than 59%) is more reasonable, resulting in a depreciated house value of \$47,700, rounded. The board further finds the condition of the barn should be adjusted to 50% on the ARC (from 60%), resulting in a calculated value of \$23,500, rounded. Making a similar 50% adjustment to the other feature (fireplace) results in a contributory value of \$1,700.

Adding these components together results in a total abatement assessment of \$114,436 (land \$41,536; improvements \$72,900). For all of these reasons, the appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$114,436 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years.

RSA 76:17-c, I and II.

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, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jon and Nancy Bryan, 154 Morse Road, Mason, NH 03048, Taxpayers; Chairman, Board of Selectmen, Town of Hillsborough, PO Box 7, Hillsborough, NH 03244; and Marazoff Assessing Services, 354 Glebe Road, Westmoreland, NH 03467, Contracted Assessing Firm.

Date: 10/21/14

Anne M. Stelmach, Clerk