

Bank of New Hampshire

v.

Town of Plymouth

Docket No.: 15294-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$234,200 on a vacant, 102-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) based on a March 1993 appraisal, the Property was worth \$80,000; and
- (2) even the Town's sales supported an \$80,000 value.

The Taxpayer also asserted the board should use the department of revenue administration's (DRA) 1.20 median ratio, which the Taxpayer asserted

reflected the general level of assessment.

The Town argued the assessment was proper because:

- (1) the Town reviewed and adjusted the assessment;
- (2) the 1996 revaluation assessment for the Property was \$182,900 with a .97 equalization ratio; and

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- (3) five vacant land sales supported the assessment.

The Town also asserted the board should use the DRA's 1.35 mean ratio, which the Town asserted reflected the general level of assessment.

### **BOARD'S RULINGS**

Based on the evidence, the board finds the proper assessment to be \$96,000 (\$80,000 market value x 1.20 equalization ratio).

### **VALUE**

The board finds an \$80,000 value based on the following.

1) The Town calculated the revised assessment by using the revaluation methodology that was developed in 1991. The board questions whether that methodology correctly valued the Property. The Town did not convince the board that it had considered all of the various factors that affect the Property's value.

The following factors affect the Property's value.

a) The Property lacks any public-road frontage. The Property has a fifty-foot-wide right-of-way through an abutting property, but that right-of-way has not been paved or accepted as a Town road. Thus, to develop the Property would require improving that right-of-way and obtaining Town acceptance as a road. Otherwise, the Property would not have any road frontage. After this roadwork, the developer would be required to construct whatever interior road would be necessary for development. The board received some information about the possible engineering problems for an interior road.

b) The demand for this Property for industrial development appears low.

The board heard testimony that industrial land had seen a steep decline in value, especially because available industrial buildings dissuaded new industrial development. In addition to the general downturn, the board heard testimony that land was available directly on Tenney Mountain Highway, and thus, even when demand increased, the development of this Property would probably be delayed until properties with better access and visibility were developed.

c) The Town classifies a large and centrally located portion of this Property as poor soil that would be unsuitable for commercial development. Additionally, the topography is varied with some steep slopes.

2) The Town submitted five vacant land sales to support the assessment.

However, the Town did not perform any comparable analysis and therefore did not present a market value for the Property.

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3) The Taxpayer presented a reliable appraisal that considered the Property's attributes and detriments, and the appraisal used the best available market information that was presented to the board.

#### **EQUALIZATION RATIO**

The board finds the DRA's 1.20 median to be the equalization ratio that most "reasonably" represents the general assessment level. See Appeal of City of Nashua, 138 N.H. 261, 266-67 (1994).

#### **Background**

An equalization ratio is a statistical measure of central tendency that describes the typical or general appraisal level. IAAO, Property Appraisal and Assessment Administration 527 (1990) (hereinafter "Property Assessment").

There are four such measures that are applicable to ratio studies: 1) the median; 2) the mean (also known as the average); 3) the weighted mean (also

known as the aggregate); and 4) the geometric mean. Id. at 527. Neither party discussed the geometric mean, and thus the board will only address the remaining three measures.

The median ratio is the middle ratio when the ratios are arrayed in order of magnitude. The median has several advantages, especially because it discounts the effect of extreme ratios (also known as "outliers"). A possible disadvantage of the median is that it gives no added weight to legitimate outliers.

The mean ratio is the average ratio (total of all ratios ÷ number of ratios). "The mean accurately reflects the full magnitude of every ratio, which is desirable only if outliers are based on valid data and occur with the same frequency in both the sample and the population. Outliers particularly affect the mean in small samples." Id. at 528.

The weighted mean is an aggregate ratio that is calculated by summing the assessed values and summing the sales prices and then dividing the total assessed values by the total sales prices (total assessments ÷ total sales prices). "The weighted mean weights each ratio in proportion to its sale

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price, whereas the mean and median give equal weight to each sale price." Id. at 529. (The information in the preceding three paragraphs was taken from Property Assessment at 527-530.)

Under New Hampshire law, all property must be assessed at the same level of assessment. Appeal of Andrews, 136 N.H. 61, 64 (1992). The court in Andrews stated that there is only one equalization ratio for each municipality and that ratio must be applied to all properties even though that ratio is

only the median or midpoint of all tax ratios in the town. Id. at 65.

**Discussion of Town Arguments**

The Town asserted the board should use the DRA's 1.35 mean equalization ratio. The Town stated that it had used the 1.35 ratio in reviewing abatement requests for other taxpayers. The Town did not otherwise indicate how it used the 1.35 ratio in its assessing practices.

The DRA established the Town's equalization ratio at 1.20, using the median ratio. The Town did not appeal, pursuant to RSA 71-B:5 II, the DRA's 1.20 ratio. Linda Kennedy, the DRA's equalization supervisor, testified that the DRA's ratio is used to: 1) apportion county taxes and cooperative school district taxes; 2) calculate foundation aid for education; and 3) calculate highway block grants.

The Town asserted two basic justifications for why the DRA's 1.35 mean ratio should be used in these abatement appeals. First, the mean ratio should be used because it gives weight to "legitimate"<sup>1</sup> but statistically extreme ratios (also known as "outliers"). Town Exhibit A, Attachment 1, Page 7. Second, the relationship between the total value before exemptions (line 8 of the MS-1 forms) for 1995 and 1996 supported the 1.35 ratio.

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Before addressing the Town's specific arguments, the board observes that the sample size in the DRA ratio study was small -- only 49 sales of which 39

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<sup>1</sup> The term "legitimate" was the Town's term. The board will use the word "legitimate" to mean ratios that are based on valid data and therefore warrant equal weight in the ratio study. See Property Assessment at 528.

were verified. The IAAO specifically warns about the effect outliers will have on a small sample size. See Property Assessment at 528 ("Outliers particularly affect the mean in small samples.")

The Town's first argument requires a finding that the outlier ratios were legitimate and deserve equal weight to the nonoutliers. The board finds the Town did not show the outliers were legitimate.

The only evidence the board received concerning the Town's justification of the outliers was Mr. Lessard's testimony that the Town arrayed the ratios, looked at the outliers, and determined that they were legitimate and should be given equal weight to other ratios in the ratio calculation. The Town did not, however, explain to the board how these outliers were legitimate.

The Town wanted the board to focus on the validity of the sales prices for the outliers. However, a ratio consists of two components -- the sale price and the assessment. Therefore, to be considered legitimate, and thus accorded equal weight, both the assessment and the sale must be legitimate. The data indicates the assessments for many of the higher outliers were not proportional to the general assessment level for the Town.

The outliers on the high end of the ratio study were predominantly from two general property categories -- residential land and manufactured housing.

Table A represents the number of sales above certain ratios and of that number how many were residential land sales or manufactured housing sales. The table demonstrates that the higher outliers, which were selected because the Town is proffering a higher ratio, were concentrated in the two strata that had very high stratified ratios, namely manufactured housing and residential land.

**Table A**

Total number of sales with ratios above 200	7
Total number of sales of residential land and manufactured homes with ratios above 200	6
Total number of sales with ratios above 150	11
Total number of sales of residential land and manufactured house with ratios above 150	8
Total number of sales with ratios above 130	18
Total number of sales of residential land and manufactured house with ratios above 130	10

The DRA's stratified ratios demonstrate that residential land and manufactured housing were disproportionately assessed compared to other property types. This was confirmed by the board's review appraiser's ratio work in Plymouth Reassessment, Docket No. 13915-93-RA. Table B below contains the DRA's ratios for 1994 for the total sample and for individual property types.

**Table B**  
**1994 DRA Ratios**

<b>Overall Ratios (49 Sales)</b>	
Median	120%
Mean	135%
Aggregate	122%
<b>Stratified Ratios</b>	
Residential Land (7 Sales)	
Median	204%
Mean	188%
Aggregate	172%
Residential Land and Buildings (17 Sales)	
Median	120%
Mean	121%
Aggregate	117%
Condominiums (14 Sales)	
Median	117%
Mean	119%
Aggregate	117%
Manufactured Homes (7 Sales)	
Median	146%
Mean	152%
Aggregate	147%
Duplex; Multi-family (Only 2 Sales)	
Median	163%
Mean	163%
Aggregate	160%
Waterfront (Only 2 Sales)	
Median	96%

Mean	96%
Aggregate	95%

The above tables, especially with the very high ratios for residential land and manufactured housing shown in Table B, draw into question the legitimacy of the outliers. Simply put, the sales prices may have reflected market value prices, but the assessments in these categories were not reflective of the general level of assessment. To adopt the mean ratio would result in these categories of sales having a great influence on the ratio because the mean calculation gives equal weight to these sales.

The board recalculated the DRA's ratio, excluding the sales of residential land and manufactured housing. This produced a median ratio of 117 and a mean ratio of 118.

Based on all of the above analysis, the mean ratio was dramatically affected by high outliers that were predominantly from sales of residential land and manufactured housing and that those outliers could not be relied upon as legitimate because the assessments on those properties were disproportionately high compared to the general level of assessment in other strata. Therefore, the board finds the Town has not shown the 1.35 ratio should be used.

Concerning the Town's second argument -- comparing the total valuation before exemption on the MS-1 forms for 1995 and 1996, the board finds that comparison does not overcome the above analysis. Additionally, the Town did not adequately explain why it used the 1995 MS-1 instead of the 1994 MS-1, and the Town did not explain what adjustments were required to reflect differences for the new construction and the like between the two years.

Given the above consideration, the board finds the Taxpayer has shown

overassessment.

**REFUND**

If the taxes have been paid, the amount paid on the value in excess of \$96,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town

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shall also refund any overpayment for 1995. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

**REHEARING AND APPEAL**

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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(e). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John G. Cronin, Esq., Counsel for Bank of New Hampshire, Taxpayer; and Chairman, Selectmen of Plymouth.

Date: December 20, 1996

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Valerie B. Lanigan, Clerk

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