

Frank H. and Joan Bauerschmidt

v.

Town of Amherst

Docket No.: 15742-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$159,400 on a condominium (the Property). The Taxpayers also own, but did not appeal, another property in the Town with a \$129,600 assessment. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) it was higher than the assessments of similar units in the development;
- (2) asking prices and sales of units in the development did not support the assessment; and

(3) the Property's market value as of April 1994 was \$150,000.

The Town argued the assessment was proper because:

(1) the biggest difference in the Taxpayers' assessment and the assessment on other units was the Taxpayers have a superior finished basement;

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(2) sales of units in the development and other comparable sales supported the assessment; and

(3) a 1.20 economic adjustment was applied to all units in the development to reflect a market decrease in the development.

Board's Rulings

Based on the evidence, the board finds Taxpayers did not show the Property was overassessed.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The board received some information from the Taxpayers concerning present asking prices on two properties in the development, and the Taxpayers and the Town submitted information concerning two sales near the assessment date. The sales information is listed (and compared to the Property) below in Table A.

Table A

Property	SFLA*	Finished Basement	Garage	Bedrooms	Bath
Subject	1866	Yes 756 sf	detached	3	3
Unit 2 (sold 3/94 \$153,000)	1516	Yes 924 sf	basement	2	2
Unit 3 (sold 9/93 \$120,000)	1516	Yes 924 sf	basement	2	3

*"SFLA" means the square feet living area from assessment-record card.

Based on the comparison of the sales to the Property, the board could not conclude the Property was overassessed. Specifically, the Property was superior to the sale properties in the following ways: 1) larger; 2) detached

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garage compared to basement garage; 3) superior basement finish; and 4) units 2 and 3 were Hollis-style units, which were originally the lower-priced houses in the development when the Property is an Amherst-style unit.

The board then compared the Property's assessments with the assessments on other Amherst-style units. (Table B is a general assessment comparison of the Property to three other Amherst-style properties.)

Table B

Unit ^a	Assessment	SFLA	Bedrooms	Baths	Assessment on Finished Basement ^b
4 (subject)	\$159,400	1866	3	3	\$11,779
1	\$136,500	1866	2	1 ^c	0
7	\$151,400	1866	3	2½ ^d	\$7,867
11	\$141,900	1866	2	2½	0

Notes

a - Unit 7 = 2 Fox Run

- b - "Assessment Finished Basement" means assessment on the finished basement
- c - Unit 1 - 1 bath with 2 additional fixtures
- d - Unit 7 - 2½ bath with 2 additional fixtures

This table demonstrates that one major difference in the assessments between the Property and these three other Amherst-style houses was the basement finish. Additionally, the subject Property has three bedrooms similar to Unit 7 but superior to Units 1 and 11. Based on this review, the board could not find that the Property was assessed disproportionately to other properties once considerations were made for various factors.

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

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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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank H. and Joan Bauerschmidt, Taxpayers; and Chairman, Selectmen of Amherst.

Date: December 20, 1996

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayers'" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

In reviewing the Taxpayers' motion and this file, the board again was reminded why it denied this appeal -- the Taxpayers did not present any supported opinion of market value for the "Property." As stated in paragraph 2 of the decision, the Taxpayers have the burden to "show that the Property's assessment was higher than the general level of assessment in the municipality." As stated on page 2 of the decision: "To carry their burden, the Taxpayers should have made a showing of the Property's fair market value."

The Taxpayers did not do this, and therefore, there was no basis for the board to grant an abatement.

To clarify the decision, the board was unable to grant an abatement because of the Taxpayers' failure to carry their burden.

In the decision, the board addressed the Taxpayers' other arguments and discussed the other market information presented by the parties to determine if there was any other evidence that could warrant an abatement. After this

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review, in connection with the original decision and with the rehearing motion, the board could not conclude that the other evidence had overcome the Taxpayers' failure to carry its burden to establish the Property's market value.

Nonetheless, for completeness the board responds to the other issues raised in the motion.

The board admits Table A incorrectly listed the Property as having a detached garage. The table should have said "attached." The board, however, stands by the description of the garages for Units 2 and 3 as being basement garages. Unfortunately, the photographic evidence presented to the board was poor -- photocopies of property-record cards. This made it difficult for the board to judge the specific types of properties because the photocopies did not present a good three-dimensional perspective. Therefore, the board relied on the assessment-record cards. Unit 2's assessment-record card stated the unit had a two-car basement garage. Unit 3's assessment-record card did not have any indication concerning a garage. However, the card did state that Unit 2 and Unit 3 were the same, and the photographs supported this at least in so far as the main buildings were concerned.

The Taxpayers overemphasized the purpose of Table A. Table A was the board's attempt to see if any conclusion could be drawn from two sales that

were near the assessment date. The board was unable to draw any conclusions from the sales. If the Taxpayers had wanted the board to draw conclusions from the sales, the Taxpayers should have obtained an appraisal or the Taxpayer should have presented a sales comparison analysis in which the various attributes of the comparables would have been compared and then adjusted to the Property's attributes. This was not done by the Taxpayers. Again, Table A was merely an attempt to perform a broad comparison between the Property's assessment and the only sales information submitted. Based on the two sales, the board could not conclude the Property was overassessed.

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The remainder of the board's decision (beginning on page 3 paragraph 1) was our attempt to review the Taxpayers' assessment comparisons to see if any conclusions could be drawn. As stated in the decision, the board could not find the assessment comparison showed an abatement was warranted. Our review of the evidence has not changed.

We do, however, note that the Taxpayers are incorrect in stating that errors were contained in Table B (page 3 of the decision). Because the Taxpayers presented an assessment comparison, the board gathered the information for Table B from the assessment-record cards. The board finds that the information in the table, along with the notes underneath the table, supported the information in Table B. For example, the Taxpayers asserted the board erred by stating Unit 1 had only one bath. Table B, in fact, stated that Unit 1 had one bath and two additional fixtures. This terminology was used because that is what was used on the assessment-record card. The same

can be said for the finished basement space on Unit 1. The assessment-record card does not indicate any finished basement area in Unit 1. Finally, the board knew the Property's third bedroom and bathroom were located in the basement. The fact that the Property has a separate bedroom and bath may, or may not, be a value enhancer as compared to a property that only has a basement that has been finished as a recreational area or den. However, the board could not make any conclusions without having value opinions to support such conclusion. Again, we get back to the fact that the Taxpayers did not present any market value information that the board could rely upon.

In paragraphs IV, V, VI and VII the Taxpayers attempt to compare various assessments. The board reviewed this information but again, given the lack of market information, could not conclude any error had been made by the board. Assessments must consider varying factors between the units, and the Taxpayers did not show that the Property's assessment-record card contained an error that should be corrected. The board's focus is on the Property's total value although we will look at specific errors when they appear on assessment-record

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cards. The Town is entitled to a presumption that its assessments are correct, and the Taxpayers did not show that the Property's assessment was incorrect.

Finally, the Taxpayers asserted the board ignored the \$144,900 asking price on Unit 7. The board did not ignore that. Rather that is only one piece of the valuation evidence that was presented to the board, and the board attempted to look at the totality of the evidence that was submitted. For example, Unit 2 sold in March 1994 for \$153,000. This March 1994 sale was one

month before the assessment date, and it was a sale of an inferior unit compared to the Property. The board cannot focus on individual sales in making a value conclusion but rather must look at the totality of the information. The Taxpayers certainly raised some questions concerning whether the assessment was correct. However, the Taxpayers did not carry their burden to show that the assessment was excessive. Furthermore, the market information showed wide variations in prices for units.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank H. and Joan Bauerschmidt, Taxpayers; and Chairman, Selectmen of Amherst.

Date: January 24, 1997

Valerie B. Lanigan, Clerk