

Michael and Laura Hughes

v.

Town of Brookline

Docket No.: 17482-97PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 1997 assessment of \$231,700 (land \$42,800; building \$188,900) on a 3.425-acre lot with a single-family home (the “Property”). The parties agreed the house was 70% completed as of April 1, 1997; therefore, for purposes of this decision, the assessment (when adjusted for 30% incomplete) under appeal was \$175,000 (land \$42,800; building \$132,200). Members MacLellan and Ricard had presided at the hearing in this matter after which the board asked its review appraiser (Mr. Bartlett) to perform an on-site inspection and issue a report. Subsequent to that action, Member MacLellan left the board for other employment. Consequently, Member LeBrun has completely reviewed the record (file, exhibits, recording of hearing, Mr. Bartlett’s report and the parties’ responses to the report) and participates as the second member for deliberation. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or 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 carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the building assessment (as completed) exceeded the actual costs and market value, and thus, the adjusted assessment (adjusted for being incomplete on April 1, 1997) was incorrect;
- (2) two appraisals on the Property (as completed: July 1997--\$226,000 and March 1998--\$229,000), when adjusted for the 1997 incomplete status, showed the assessment was excessive;
- (3) an assessment comparison demonstrated overassessment;
- (4) the assessment process in terms of the quality grade was very subjective; and
- (5) the Town overgraded the quality of the house; some of the components are low-end such as the kitchen and baths.

The Town argued the assessment was proper because:

- (1) the Town followed the assessment methodology that was used in the 1989 revaluation;
- (2) from the Town's perspective, the department of revenue administration's (DRA) equalization ratio and coefficient of dispersion did not show an assessment problem;
- (3) the quality adjustment was warranted based on the custom-design of the Property;
- (4) the cost approach in the Taxpayers' appraisals estimated values of \$296,547 and \$244,843; the Town also stated the \$46 cost per square foot used in the Noel appraisal was low based on the cost figures in Marshall Valuation Service;

(5) the appraisals did not adequately consider the expansion potential for the two additional bedrooms; and

(6) the Town presented a sales analysis that estimated a \$265,375 value for the Property (as complete).

Board's Rulings

Based on the evidence, the board finds the market value as of April 1, 1997, to be \$250,000 (as complete) for a proper assessment of \$227,500 (land \$50,050; building \$177,450). This assessment, when adjusted for being incomplete (x .70) indicates a 1997 assessed value of \$174,250 (land \$50,050; building \$124,200).

Two distinct issues were raised by the Taxpayers: 1) the Property is overassessed when compared to similar properties; and 2) the Property is overassessed in relation to its market value. The board will address each issue separately.

1) The Taxpayers' main argument was that their Property should be assessed proportionately with other comparable, newly-constructed, higher-valued residences. It is clear from the evidence that newer, better quality homes had been assessed significantly below the DRA's 91% equalization ratio for 1997. The Taxpayers submitted an assessment-to-sales ratio of nine comparable sales which indicated a ratio of 76.4% which the Town did not dispute. Mr. Bartlett obtained the 1997 DRA equalization survey (which occurred between October 1, 1996 and September 30, 1997) which was used to establish a median ratio of 91%. The mean (average) was 93% and the aggregate (weighted average) was 89%; the price related differential (PRD) was 104% which indicated the majority of higher valued properties tend to have a lower

Page 4
Hughes v. Town of Brookline
Docket No.: 17482-97PT

assessment ratio than lower valued properties. The Taxpayers asserted that the market value of their Property was \$229,000 and their assessment should be lowered to 76.4% of the market value to be consistent with the assessments of comparable homes. This argument is without

merit and the reasons why were explained in detail during the hearing by Member MacLellan. However, the board will elaborate its reasons in this decision.

In deciding this appeal, the board must be guided by the New Hampshire Constitution, the New Hampshire statutes and New Hampshire caselaw. The board finds the guiding legal principles provided by the constitution, the statutes and caselaw answer the present issue before the board.

Under the New Hampshire Constitution, citizens are required to contribute their share of governmental costs. N.H. Const., pt. 1, art. 12. Such contributions (i.e., taxes) must be “proportional and reasonable [in] assessments, rates, and taxes ***.” N.H. Const., pt. 2, art. 5.

In Appeal of Andrews, 136 N.H. 61, 64 (1992), the court held that the above-cited constitutional provisions require that all taxpayers in a town must be assessed at the same proportion of market value. Moreover, the court stated that to establish disproportionality, a taxpayer must show that its assessment was higher than the general level of assessment in the town. The court made it clear that proportionality was to be judged across the entire town rather than only by property type. Therefore, to comply with the constitutional obligation of proportional assessment, municipalities are obligated to ensure that properties are assessed at the same general level of assessment prevailing throughout the town.

Page 5
Hughes v. Town of Brookline
Docket No.: 17482-97PT

Thus, a taxpayer does not show disproportionality that would qualify for an abatement by showing a certain segment of property was assessed below the general level of assessment. Abatements are only granted when property is assessed disproportionately high because such an assessment results in a taxpayer paying more than its share of taxes. The courts have held that in measuring tax burden, which is really what an abatement case is about, market value and the

general level of assessment in the community are the proper yardsticks to determine proportionality, not just a comparison to other similar properties.

Based on the ratio information, the Taxpayers may have been assessed higher than comparable residences, but that is not the standard for granting an abatement. See Appeal of Canata, 129 N.H. 399, 401, (1987) (underassessment of other properties does not prove the overassessment of another's property). In such a situation, the remedy would be for the Town to correct the assessments on the underassessed properties.

RSA 75:1 requires that property be assessed at market value, and the cases cited above indicate that assessments may be a proportion of market value as long as all assessments are at the same level of market value. Additionally, RSA 75:8 requires municipalities to annually review assessments and to make any adjustments that are necessary to correctly assess properties. The Town has indicated that a full revaluation has been authorized to be completed for the 2000 tax year. Were the Town not intending to conduct a revaluation, the board may have considered asserting its jurisdiction under RSA 71-B:16 to investigate whether a revaluation was necessary.

2) The Taxpayers further argued that their Property was worth less than its equalized value. As stated in paragraph 2 of this decision, to establish disproportionality, a taxpayer must
Page 6
Hughes v. Town of Brookline
Docket No.: 17482-97PT

show that the appealed property's assessment was higher than the general level of assessment in the municipality. Appeal of City of Nashua, 138 N.H. at 265. In 1997, the town-wide ratio was 91%. The Taxpayers argued the market value of their Property as of April 1997, was \$229,000. This value, when equalized by the DRA ratio for 1997, would indicate an assessed value of \$208,390 ($\$229,000 \times .91$). The Town's assessment of \$231,700, when adjusted by the equalization ratio, indicates a market value of \$254,615 ($\$231,700 \div .91$).

Based on the evidence, the board has found a market value of \$250,000. The board has

thoroughly reviewed the Taxpayers' two appraisals, the Town's analysis and Mr. Bartlett's report along with all other evidence submitted at the hearing.

The Taxpayers submitted two appraisals for the board to review: the July 1996 "Loranger" appraisal which indicated a market value of \$226,000 and the March 1998 "Noel" appraisal which indicated a market value of \$229,000. The Taxpayers relied most heavily on the Noel appraisal because it was an appraisal of the Property as if completed and the Loranger appraisal was based on an assumption that one bathroom would not be completed. The Town submitted a comparable sales analysis using four sales, three of which were also used by the Taxpayers (8 Hill Side Dr., 9 Bear Hill Rd., and 18 Hill Side Dr.). Mr. Bartlett inspected the Property (interior and exterior) and performed exterior inspections of the comparable sales. In his review, he specifically analyzed the three sales above that the parties had in common. The board has also focused its review on the same three sales for consistency and because the most evidence is available on these sales. The board will also comment on adjustments made in the Loranger appraisal, although it is understood that the comparable sales utilized in the Loranger

Page 7
Hughes v. Town of Brookline
Docket No.: 17482-97PT

appraisal are different than the three used for comparison here and the assumptions in the Loranger appraisal were different as indicated above.

There is not a significant difference (10%) in the parties' estimates of value -- Town \$255,000 equalized and Taxpayers \$229,000. Mr. Bartlett's estimate falls almost in the middle at \$245,000. In deciding this case, the board has analyzed the three sales and given weight to the adjustments based on the most convincing testimony and its own judgment¹. In arriving at its decision, the board has adjusted the three sales as follows (see grid on page 8).

¹ 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).

Quality

The board finds an adjustment should be made to the comparables for the Property’s superior quality. The board bases this decision on several factors:

1) the Town’s testimony that an interior inspection was made of the Property and some of the comparables (neither the Taxpayers, the Taxpayers’ appraisers nor Mr. Bartlett inspected the interior of any of the comparable properties);

2) the Loranger appraisal noted its quality adjustments were because of the “superior quality materials and workmanship and exterior architectural ornamentation found in the subject”; and

3) the curb-side appeal as indicated by the photographs submitted by the parties and those in Mr. Bartlett’s report.

	Subject	Comparable #1		Comparable #2		Comparable #3	
Address	5 Summit	8 Hill Side Drive		9 Bear Hill Road		18 Hill Side Drive	
Sale Date		August 16, 1997		September 29, 1997		August 1997	
Sale Price		\$222,500		\$230,000		\$223,500	
Location	Good	Better	-3,000	Good	---	Better	-3,000
Size	3.425 ac	1.83 ac	+3,000	1.96 ac	+3,000	1.95 ac	+3,000
Site/View	Average	Average	---	Average	---	Average	---
Basement	Raised 1,822 sf	Normal 1,280 sf	+5,200	Normal 988 sf	+6,700	Normal 1584 sf	+3,700
Quality	V.Good	Good	+5,000	Good	+5,000	Good	+5,000
Age/Condition	New	8 years	+3,000	6 years	+2,500	5 years	+2,000
Bed/Bath	2/2.5	4/2.5	- 4,000	3/2.5	-2,000	4/2.5	-4,000

Gross Area	2,583sf	2,528sf	+2,200	2,808sf	-9,000	2,728sf	-5,800
Heat/Cool	FHA	FHW	---	FHA	---	FHA	---
Garage	3 car	2 Car	+2,500	2 Car	+2,500	2 car	+2,500
Extras	Porches Deck	Sunroom	+3,600 +1,050	None	+7,000 +1,000	Deck	+7,000 + 600
Other	Unfin Area	None	+9,000	None	+9,000	None	+9,000
Net Adjustment			+\$27,550		+\$25,700		+\$20,000
Adjusted Sales price			\$250,050		\$255,700		\$243,500

Page 9

Hughes v. Town of Brookline

Docket No.: 17482-97PT

While the board finds some adjustment is warranted, it does not agree with the Town's \$10,000 adjustment and finds a \$5,000 adjustment is more appropriate given some of the functional problems caused by the Property's unique design.

Gross Living Area

Noel adjusted the comparables by \$25.00 per square foot, Loranger made a \$35.00 per-square-foot adjustment; the Town and Mr. Bartlett agree that a \$40.00 per-square-foot adjustment is appropriate. The board finds a \$40.00 per square foot adjustment is reasonable for the size and quality of the Property upon review of the evidence and Marshall Valuation Service.

Basement

The Property has a large (1,822 square feet) walk-out basement. The board is unsure how the Town's basement adjustments were arrived at, Loranger and Noel made no adjustments and Mr. Bartlett made a \$2,500 adjustment for it being a walk-out basement with \$5.00 per square foot added for excess size. The board agrees the basement's excess size and the ability to

walk out is a positive influence on value which should be reflected and finds Mr. Bartlett's adjustments to be reasonable.

Unfinished Area Over Garage

Noel noted in the comments section that the garage had unfinished space above accessed from the second floor which "can be finished to increase the bedroom count." No adjustment was made in the appraisal for this area. Loranger made a \$4,500 adjustment to reflect the area over the garage available to accommodate two bedrooms and a full bathroom (the board notes Loranger made a downward adjustment of \$2,000 to the comparables to reflect the lack of a bathroom on the second level; thus, the adjustment for availability of two extra bedrooms is \$2,500). The Town made a \$9,000 adjustment for the expansion area and Mr. Bartlett concurred with that adjustment. The board finds a \$9,000 adjustment (or \$15.00 per square foot) is reasonable and the market would reflect the increased value the possibility of two additional bedrooms would add.

Porches/Decks

Noel made adjustments to the three comparables without any explanation as to how they were derived. The Town made adjustments of \$12.00 per square foot for covered porch areas and \$4.00 per square foot for deck areas. Mr. Bartlett used the average of the two. Given that the burden is on the Taxpayers to show disproportionality, the board finds it is not appropriate to merely average adjustments made by two different appraisers. Further, Noel made a \$4,000 adjustment to Comparable #2 (9 Bear Hill Rd.) with the notation "large deck²." The Town and Mr. Bartlett made no adjustment on their grids for a deck. The board reviewed the assessment-

² The board also notes that Noel indicated in her report that she verified the comparable sales by "public record." There is no indication in her report that she attempted to verify the sales with any of the buyers, sellers or brokers involved.

record card which indicates there is a very small 4' X 6' deck area. The board finds a \$10.00 per-square-foot adjustment for the porches and a \$3.00 per-square-foot adjustment for the deck is reasonable and its decision reflects these adjustments.

Page 11
Hughes v. Town of Brookline
Docket No.: 17482-97PT

Land Value

The Taxpayers testified that they paid \$57,000 for the land in September 1997. Noel estimated the site value to be \$53,000. The Town's assessment indicates a market value of \$47,000 ($\$42,800 \div .91 = \$47,000$ rounded). Mr. Bartlett performed a land residual analysis on the three comparable sales and arrived at a land value of \$55,000. Based on this analysis and the Taxpayers' purchase price of \$57,000, the board finds a land value of \$55,000 is reasonable.

Conclusion

The above adjustments result in a range of values of \$243,500 to \$255,700 and the board finds a reasonable market value to be \$250,000. The board finds this market value is supported by Mr. Bartlett's cost approach of \$259,500 and Loranger's cost approach of \$296,547. The board does not agree with the cost analysis prepared by Noel because a \$46.00 cost per-square-foot price is simply too low given the Property's quality based on a review of the evidence and Marshall Valuation Service .

Finally, although the board did not rely on this information in arriving at its decision, the board notes that the Taxpayers expended \$207,000 in cash for the Property. This does not include any charge for Mr. Hughes acting as his own general contractor. However, he did take a year off from work to build the home and some labor costs must be factored into the total costs. Mr. Hughes testified that he had spoken to a general contractor to question what the costs may be

had he contracted the job and he was advised it would be around \$200,000, not including the land. The Taxpayers paid \$57,000 for the land which would suggest total costs of \$257,000 to construct the house.

Page 12
Hughes v. Town of Brookline
Docket No.: 17482-97PT

The board, therefore, finds the proper assessment as completed to be \$227,500 (land \$50,050; building \$177,450). The assessment, based on 70% complete as of April 1997, was \$174,250 (land \$50,050; building \$124,200).

If the taxes have been paid, the amount paid on the value in excess of \$174,250 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 shall also refund any overpayment for 1997³. 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.

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

3 Based on the completed assessed value of \$227,500.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Michael and Laura Hughes, Taxpayers; Gary J. Roberge, Sr., Agent for the Town of Brookline; and Chairman, Selectmen of Brookline; and a courtesy copy to Thomas I. Arnold, Jr.

Date: June 28, 1999

Lynn M. Wheeler, Clerk

Michael and Laura Hughes

v.

Town of Brookline

Docket No.: 17482-97PT

ORDER

This order responds to the “Taxpayers’” motion for reconsideration and 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 reasons” to grant a rehearing. See RSA 541:3.

The board has reviewed the record in this case and finds the June 28, 1999 decision is clear and addresses the rehearing arguments. In its Motion, the Taxpayers argue that the parties did not stipulate that the department of revenue administration’s (DRA) equalization ratio was the appropriate ratio to be applied, and thus, the Taxpayers were not given an opportunity to challenge the DRA study. The board’s review of the record indicates the board explained the DRA ratio process to the Taxpayers in detail. Further, the board’s review appraiser (Mr. Bartlett)

Docket No.: 17482-97PT

referenced the 1997 DRA study which established a median ratio⁴ of 91%. The parties were given an opportunity to respond to Mr. Bartlett's report and did so. Therefore, the Taxpayers were afforded ample opportunity to challenge the study. Even if the parties did not stipulate to the ratio and even if there was not lengthy discussion, the study submitted by the Taxpayers was of one strata, not all types of property, and the court has made it clear that proportionality is to be judged across the entire town rather than only by property type. Appeal of Andrews, 136 N.H. 61, 64 (1992).

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerks date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Page 3
Hughes v. Town of Brookline
Docket No.: 17482-97PT

⁴ The DRA typically uses the median ratio over the aggregate ratio in determining the municipality's equalization ratio because the extremes do not affect the outcome. Appeal of Town of Bow & a., 133 N.H. 194, 197 (1990). The median is the preferred measure of central tendency in many ratio study applications because it is easy to compute and interpret, discounts the effects of extreme ratios and is little affected by data error. See Property Appraisal and Assessment Administration, The International Association of Assessing Officers, 526 (1990).

Certification

I hereby certify that a copy of the foregoing order has this date been mailed, postage prepaid, to John G. Cronin, Esq., counsel for the Taxpayers; Gary J. Roberge, Sr., Agent for the Town of Brookline; and Chairman, Selectmen of Brookline; and a courtesy copy to Thomas I. Arnold, Jr.

Date: September 3, 1999 _____

Lynn M. Wheeler, Clerk

0006