

**George and Linda Rowe**

**v.**

**Town of Sutton**

**Docket No.: 17766-98PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$73,550 (land \$25,500; buildings \$48,050) on a 2.2-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property was appraised for \$68,000 for refinancing purposes;

(2) the Taxpayers receive few if any municipal services from the Town, use of the Town dump is

viewed as a “privilege” rather than a right and they are “overtaxed” relative to the services they receive;

- (3) the market value of the Property has fallen because of an undesirable neighbor; and
- (4) the assessment-record card for the Property is incorrect because the Taxpayers only enclosed about one-third of the porch, not all of it.

The Town argued the assessment was proper because:

- (1) three comparable sales support the assessment;
- (2) the Taxpayers priced their house to sell at \$108,500 when it was on the market in 1998;
- (3) the porch enclosure was part of a “pick up” in 1999, which affected the 1999, but not the 1998, assessment, and the assessment-record card correctly indicates that some of the porch “is open into house [and] some is not”; and
- (4) the Town’s equalization ratio was 107% for 1998; using this ratio, an assessed value of \$73,550 implies a market value of \$68,738 ( $\$73,550 \div 1.07$ ), which is well within the range of the Property’s market value.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to prove the assessment was disproportional to other assessments in the Town. Assessments must be based on market value. See RSA 75:1. The assessment of a specific property must be proportional to the general level of assessment in the municipality. In this municipality, the 1998 level of assessment was 107% as determined by the department of revenue administration’s equalization ratio. This means assessments generally were higher than market value by seven percent. The Property’s

equalized value was \$68,738 (\$73,550 assessment divided by the 107% equalization ratio). This equalized value should provide an approximation of market value. To prove overassessment, the Taxpayers would have to show the Property was worth less than the \$68,738 equalized value. The Taxpayers failed to make such a showing here.

The Taxpayers relied entirely on a refinancing appraisal done for Lake Sunapee Bank in 1998 which indicated an appraised value of \$68,000. With a 107% equalization ratio, this appraised value yields an assessed value of \$72,760, which is only negligibly less (1.1%) than the assessed value determined by the Town (\$73,550). The board is not obligated or empowered to establish a fair market value of the Property with any degree of exactitude. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment by the Town has resulted in the Taxpayers paying an unfair share of taxes. Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). The Taxpayers' refinancing appraisal relied on three comparable sales which, when adjusted for differences, indicated values of \$68,500, \$67,500 and \$68,900. The appraiser chose an indicated market value of \$68,000. The Property's assessed value indicates a market value of \$68,738, which falls in line with the appraiser's value; thus, the appraisal supports the assessed value of the Property.

While the Taxpayers stated the nuisance created by a neighbor reduced the value of the Property, their appraisal did not reflect that this was a factor in 1998 and the Taxpayers presented no evidence to quantify how much, if at all, conditions on the neighboring property

affected the value of the Property.

The Town, on the other hand, presented the assessment-record cards for three comparable properties, each of which had assessed values higher than the Property. The Taxpayers presented no evidence to rebut the validity or comparability of these assessments.

While the Taxpayers complained about the high amount of taxes they must pay in the Town in return for few if any services, the amount of property taxes is determined by two factors: (1) the Property's assessment; and (2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor: i.e., the board decides if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor, the municipality's budget. See The Bretton Woods Company v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

Lack of municipal services is not necessarily evidence of disproportionality. The basis of assessing property is market value. See RSA 75:1. Any effect on value due to lack of municipal services would be reflected in the selling prices of comparables and consequently in the resulting assessments. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

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

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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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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to George and Linda Rowe, Taxpayers; and Chairman, Board of Selectmen of Sutton.

Date: August 2, 2000

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Lynn M. Wheeler, Clerk

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