

George R. and Susan E. Duke

v.

Town of Exeter

Docket No.: 17846-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$271,100 (land \$62,600; buildings \$208,500) on a 5-acre lot with a single-family home (the "Property"). 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 town was completely revalued in 1997;
- (2) no changes have been made to the Property between the date of the revaluation and the date the Taxpayers purchased the Property;
- (3) the Taxpayers were from out of state and were unfamiliar with local real estate trends and

values;

(4) the Taxpayers were looking for an antique, colonial-style house and fell in love with the Property, probably overpaying for the Property due to their unfamiliarity with the local real estate market; and

(5) the assessment changes made by the Town were subjective, not market derived, and the Property was singled out for review based solely on the selling price.

The Town argued the assessment was proper because:

(1) the Town receives the deeds recording the transfers of all properties in the Town and reviews the assessment of any property that sells for substantially more than its assessed value; and

(2) although the Taxpayers may have overpaid for the Property, the purchase price was approximately 51% above the equalized assessed value and it was appropriate for the Town to review the Property's assessment.

Subsequent to the hearing, the board directed its review appraiser to review the file, inspect the Property and submit a report. Both parties were then given an opportunity to review the report and submit comments to the board. Note: the board reviews the report and treats the report as it would other evidence, giving it the weight it deserves, thus, the board may accept or reject the review appraiser's recommendation.

Board's Rulings

Based on the evidence, the board finds the correct assessment to be \$257,000 based on a market value finding of \$265,000 on April 1, 1998.

All assessments must be based on market value. See RSA 75:1. The board finds the best

evidence of market value for the Property is the board's review appraiser's report. As previously stated, the board considers the review appraiser's report one piece of evidence which, in this case, the board finds compelling. The calculations and adjustments made by Mr. Hamilton in the sales comparison approach to value are reasonable and generally market related. The board finds Mr. Hamilton's report took into account all factors that would influence value including, but not limited to, the location of the Property, its size and road frontage, the condition of the improvements, the size of the dwelling as well as any garages, outbuildings or other features. The board finds the review appraiser's report to be of sufficient depth to reflect an accurate estimate of market value for the Property. The report concluded the market value for the Property on April 1, 1998, was \$265,000 which would equate to an assessed value of \$257,000 (rounded). Market value cannot be proved with mathematical certainty and must ultimately be a matter of informed judgement. "Given all the imponderables in the valuation process, '[j]udgement is the touchstone.'" Public Service Company v. Town of Ashland, 117 N.H. 635, 639 (1977).

The Town did not rebut or comment on the board's review appraiser's report. However, the Taxpayer's attorney filed "Comments on Review Appraisal." The board finds the comments to be misplaced. The board's review appraiser did not determine the value of any of the comparable properties; rather, employing standard appraisal methodology, he compared the subject Property to each of the comparable properties. Each comparable property was adjusted for dissimilar characteristics between it and the Property. The resulting values are indications of market value for the Property, not the comparable. There are no values in the report for any of

the comparable properties. The review appraiser followed standard appraisal methodology for completing the sales comparison approach to value for the Property. The board found the review appraiser addressed all factors that would impact value including functional obsolescence inasmuch as all properties of that age have some functional obsolescence. (Note the total depreciation on the assessment-record cards of three of the four comparable sales is higher than the total of physical and functional depreciation on the Properties' assessment-record card.)

If the taxes have been paid, the amount paid on the value in excess of \$257,000 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 shall also refund any overpayment for . 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 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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Paul B. Franklin, Chairman

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to R. Lawrence Cullen, Esq., Counsel for George R. and Susan E. Duke, Taxpayers; and Chairman, Board of Selectmen of Exeter.

Date: August 16, 2000

Lynn M. Wheeler, Clerk

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Board/PFDR/17846-98

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Town of Exeter

Docket No.: 17846-98PT

ORDER

This order responds to the “Taxpayers’” August 30, 2000 rehearing request, which is denied.

The Taxpayers’ argument rests primarily on their contention that other properties in the “Town” may be under or disproportionately assessed in comparison to their property. The possibility of the underassessment of other properties does not prove the overassessment of the Taxpayers’ Property. See Appeal of Michael D. Cannata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers’ assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to

a few other similar properties. E.g., id. Given the evidence submitted, reducing the Taxpayers' assessment to \$201,400 would result in the Taxpayers being underassessed.

The board's decision of August 16, 2000, is based upon the best evidence of market value submitted in the proceeding, that being the board's review appraiser's estimate of value of \$265,000 and the Town's 1998 equalization ratio of 97%. Proportional assessing is achieved by relating the market value of real estate (RSA 75:1) to the town-wide general level of assessment; in this case, the only evidence submitted as to the Town's general level of assessment was the department of revenue administration 1998 ratio of 97%. Thus the board's ordered assessment of \$257,000 ($\$265,000 \times .97$) results in a proportional assessment for the Taxpayers.

As noted in an order of the same date (Docket No.: 18376-00RA), the Town's assessment actions raise questions that the board intends to pursue further under its general authority contained in RSA 71-B:16, III as to whether there exists a need for a general reassessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to George R. and Susan E. Duke, Taxpayers; and Chairman, Board of Selectmen of Exeter.

Date: September 18, 2000

Lynn M. Wheeler, Clerk

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