

John T. and Bertha K. O'Brien

v.

Town of Amherst

Docket No.: 17849-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 original assessment of \$114,400, abated to \$107,700 (land \$60,600; buildings \$47,100), on a .28-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, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show 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) there were errors on the assessment-record card (which resulted in the corrected abatement of the land value of 10% from \$67,300 to 60,600);
- (2) the Property's assessed land value has increased by 535% over the past 12 years;
- (3) the Town failed to consider relevant factors in assessing the Property;
- (4) the assessed value of the Property has increased much faster than the Consumer Price Index (CPI); and
- (5) applying CPI to the previous land assessed value of \$10,000 would result in a total assessed value of approximately \$85,740.

The Town argued the assessment was proper because:

- (1) five comparable sales with less square footage, including one on the same street, indicate the Property was properly assessed;
- (2) especially because of the small lot size, the total value (land and building) must be considered rather than isolating land value alone; and
- (3) the inflation rate in land, particularly in this section of the Town, which contains expensive properties, has nothing to do with the overall CPI.

As noticed to the parties in an order dated August 23, 2000, the board takes official notice of a certain "Report of Tax Review Appraiser" (the "Report") dated August 21, 2000.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove that the assessment was disproportionate. The board finds the Taxpayers' argument that the previous land assessment should only be increased at the same level as the CPI is specious and without basis.

RSA 75:1 requires the Property be assessed relative to market value. The CPI is not necessarily reflective of real estate market changes, and therefore, is not a basis for assessing property. A greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

Further, the sales presented by the Town indicate the Taxpayers' Property, albeit small, having the shallow soils and nonconforming lot size issues, has a market value at least that of the Town's assessed value rather than the \$85,740 assessment argued by the Taxpayers.

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

Paul B. Franklin, Chairman

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 John T. and Bertha K. O'Brien, Taxpayer; and Chairman, Board of Selectmen of Amherst.

Date: September 22, 2000

Lynn M. Wheeler, Clerk

John T. and Bertha K. O'Brien

v.

Town of Amherst

Docket No.: 17849-98PT

ORDER

This order responds to the "Taxpayers'" October 21, 2000 motion for rehearing ("Motion") and October 23, 2000 Addendum to Motion, which are denied.

The board finds the corrections and new facts/arguments the Taxpayers wish to make do not warrant opening the record for a rehearing. The Taxpayers' argument that land values should increase based on the Consumer Price Index (CPI) or some multiple factor of the CPI is, as the board ruled in its September 22, 2000 decision, not based on market value as required by RSA 75:1. Further, the board determined the total assessment was reasonable based on recent comparable sales, and thus, does not need to open the record to hear arguments in this case relative to the Town's land assessment methodology.

The report filed by the board's review appraiser relative to several 1998 Amherst appeals, of which the board took official notice of in this case, revealed some "selective" and "irregular"

appraisal practices that raise concerns as to the overall assessment equity in the Town. The board intends to make further findings as to whether it should assert its RSA 71-B:16, III authority and order a reassessment or some other method to improve the Town's assessment equity. See order of same date, Docket No.: 18390-00RA included with this order.

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

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

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 John T. and Bertha K. O'Brien, Taxpayer; and Chairman, Board of Selectmen of Amherst.

Date: November 20, 2000

Lynn M. Wheeler, Clerk