

Linda Kaiser

v.

Town of Amherst

Docket No.: 17915-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$252,700 (land \$88,000; buildings \$164,700) on a 1.38-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is granted.

Following a hearing on May 10, 2000, the board, in light of this case and other property tax appeals from the Town, ordered its review appraiser to examine the files and other available information and submit a report on his findings (the "Report"). The Report was issued on August 21, 2000. Copies have been supplied to the Town and the Taxpayers, and each has had an opportunity to file further comments with the board. The Town filed its comments on September 11, 2000.

In property tax appeals, the Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property's assessment was higher

than the general level of assessment in the municipality. Id.

The Taxpayer argued the assessment was excessive because:

- (1) the house is 220 years old and the Property is located in the historic district;
- (2) the assessment increased at a higher percentage than other properties in the same district;
- (3) the Town increased the assessment substantially when it learned the Property was listed for sale at a very high price (\$379,000), but this high price was inflated because the Taxpayer did not want to move (in the face of pressure from her employer to relocate) and she subsequently took the Property off the market;
- (4) while the Property is in reasonably good condition, the basement is dirt and stone and subject to flooding, the roof and septic systems are forty years old and the land value should be adjusted because much of the land is under water; and
- (5) the proper assessment should be approximately \$181,500 based on a revised land value of \$70,000 and an assessed value of \$47.30 per square foot (times 2,356 square feet).

At the hearing, the Town proposed a revised, reduced assessment of \$235,800 and argued this was proper because:

- (1) the Property was purchased in October, 1986 for \$225,000 and the revised assessment is reasonable in light of market appreciation;
- (2) the grade of the home should be adjusted;
- (3) three comparable sales, with similar gross living area and grades, support the revised assessment; and
- (4) the Town's reported equalization ratio in 1998 was .98.

Board's Rulings

The Property was assessed at \$156,000 in 1994. In that year, the Town performed a full revaluation, including inspections of all properties. In 1998, according to the Town's assessment record card, a "3 season Porch" addition was completed, at a cost to the Taxpayer of \$10,000, and the Property was "Reinspected" at the Taxpayer's request. In that year, the Property's assessed value was initially increased to \$303,000, apparently because of these developments and the listing noted above, and then, in response to the Taxpayer's abatement request, adjusted downward to \$252,700.

During the hearing on May 10, 2000, however, the Town proposed reducing the assessment further to \$235,800.¹ Based on the evidence, and for the reasons explained below, the board finds an assessment of \$235,800 to be proper.

Proportionate assessments are a product of the market value of taxable real estate and the municipality's level of assessment. "[O]ur constitution mandates that all taxpayers in a town be assessed at the same proportion of [fair market value]." Public Service Co. of N.H. v. Town of Seabrook, 133 N.H. 365, 377 (1990); Appeal of Andrews, 136 N.H. 61, 64 (1992); RSA 75:1 (all

¹At the hearing, the Town Assessor produced several computerized property data sheets (each entitled a "Valuation Report"): the Valuation Report dated 'as of 01-11-2000' shows a building value of \$164,700, a land value of \$88,000 and a total assessed value of \$252,700; a later Valuation Report dated 'as of 04-09-00' shows a grade adjustment (from "AA 0.75" to "A 1.00"), a reduced building value of \$147,800, the same land value and a total assessed value of \$235,800.

taxable real estate must be assessed relative to market value). Generally, the median assessment-to-sales ratio of recently sold property is representative of a municipality's general level of assessment. Andrews, supra, 136 N.H. at 65.

Consequently, the board's decision in this case, as in all property tax cases, is a three-step process: 1) determine what is the taxable real estate; 2) determine the real estate's market value; and 3) determine the municipality's general level of assessment. (There is no dispute in this case regarding the first issue, leaving the remaining two for further consideration.)

Level of Assessment

The review appraiser's Report in this case relates primarily to the Town's proper level of assessment. The Report uncovered evidence of both "selective" and "irregular" appraisal practices within the Town. In particular, the Report suggests "the Town selectively reappraised recently sold property." The Report uses approved International Association of Assessing Officers (IAAO) techniques to correct for this and concludes that a more accurate adjusted median equalization ratio for the Town for 1998 should have been .94 rather than .98. While the Report is quite detailed, in summary it concluded with several analyses (summarized below) that the level of assessment was lower than the .98 found by the Department of Revenue Administration (DRA).

- 1) The subsequent sales analysis of sales occurring after September 30, 1998, results in a median ratio that is not consistent with the DRA's 1999 ratio of .92.
- 2) The distribution of the indicated ratios of sold properties (October 1, 1997 - September 30, 1998) is tighter (fewer samples outside several deviations) than the expected

distribution of unsold properties (based on subsequent sales, September 30, 1998 - January 12, 1999).

3) Comparisons of the rate of assessment increase of unsold properties both to the median ratio calculated utilizing the 1997 assessments ($1.1012 \times .86$), and to the average change in assessment for sold properties ($1.1012/1.1536$).

The board agrees with the Report's conclusion that the Town's level of assessment for 1998 is more appropriately .94 rather than .98 and, thus, we are unable to rely upon the DRA's ratio of .98 as we conclude it is not truly representative of the assessments for the majority of the properties (unsold properties) in the Town.

Consequently, the board will apply a .94 ratio to its finding of market value in the next section.

Market Value

The evidence presented to the board by the Taxpayer included assessment information on nine other properties in the Town, all of which, like the Property, are listed in the National Register of Historic Places, were built in 1850 or earlier and are "within 2 blocks" of the Property. The Taxpayer's house was built in 1780. The Taxpayer stated she 'didn't know' the market value of the Property or these other properties. She believed she was entitled to an abatement because of the difference between the percentage increase in her assessment between 1994 and 1998 ($\$156,000$ to $\$252,700 = 62\%$ increase) compared to the range for these nine properties: "5 - 24%."

Even if the increase in the assessed values of these properties was less than for the Property, this may simply reflect *underassessment* of these properties rather than *overassessment* of the Property. The underassessment of certain other properties does not prove the overassessment of the Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987).

Regarding land values, the Taxpayer testified her Property had a pond and that much of the land, consisting of 1.38 acres, was ‘wet’ and therefore its value should be adjusted downward. The Taxpayer believed the correct assessed value for the land should be \$70,000 (instead of \$88,000). In support of this argument, she indicated that her house was not on the Town common, but was nevertheless being assessed at the ‘same value’ as comparable properties situated there. There is, however, little evidence to support the Taxpayer’s position because the three comparables used by the Town have much smaller land areas (0.46 acres, 0.36 acres and 0.46 acres) and even less assessed value attributed to the land (\$82,400, \$81,200 and \$81,600) than the assessed value of \$88,000 for the Taxpayer’s land. The board also notes the existence of a pond on the Property can be an amenity, rather than a detriment, adding rather than detracting from value. For these reasons, the board concludes the Taxpayer has failed to prove the assessed value of the land is less than \$88,000.

The Town presented three comparable sales of historic properties (built between 1825 and 1850) as Municipality Exhibit A, but some of the data presented is incorrect² and confusing

² For example, the Valuation Report for 4 Foundry Street reflects a “GLA” of 2,798, not 2,108, and no Valuation Report was submitted for 8 Foundry

at best. The board must, therefore, reach its own conclusions regarding whether the market value of the Property as of April 1, 1998, supports the Town's proposed assessed value of \$235,800. As a starting point, the board notes the Property was purchased by the Taxpayer in 1986 for \$225,000. There is, of course, no evidence that the market value in 1998 was less than this sum. To the contrary, some appreciation in market value is no doubt indicated. The Taxpayer provided no evidence to rebut or modify this conclusion: instead, as noted above, she stated she simply 'didn't know' the market value of the Property.

One approach to resolving this issue is to apply an appropriate equalization ratio to the Town's proposed assessed value to determine if the indicated market value is justifiable. As noted above, the Report used approved IAAO techniques to conclude a more accurate ratio for the Town should have been .94 rather than .98. If an equalization ratio of .94 is used, the revised assessed value of \$235,800 would indicate a market value of approximately \$250,850.

While the board can accept the Taxpayer's explanation as to why she listed the Property for sale at a much higher price (\$379,000), it is difficult to conclude the market value of the Property was not at least \$250,850 as of April 1, 1998, the tax assessment date. This figure represents about an 11.5% increase in market value over 12 years when compared to the purchase price of \$225,000, even without consideration of the \$10,000 spent on the porch improvement completed in 1998.

Conclusions

In the absence of more compelling evidence of market value, the board accepts the Town's proposal that the correct assessment of the Property as of April 1, 1998, should have been \$235,800 and the Taxpayer is entitled to an abatement to this amount.

If the taxes have been paid, the amount paid on the value in excess of \$235,800 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 1999. 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. See also RSA 76:17-c, I.

In addition, the "selective" and "irregular" appraisal practices discussed in the Report 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 decision.

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

Michele E. LeBrun, Member

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 Linda Kaiser, Taxpayer; and Chairman, Board of Selectmen of Amherst.

Date: November 20, 2000

Lynn M. Wheeler, Clerk