

Daniel and Marilyn Fenton

v.

Town of Amherst

Docket No.: 17921-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$329,300 (land \$86,000; buildings \$243,300) on a 2.81-acre lot with a single-family home (the "Property"). The Taxpayers also own, but did not appeal, a vacant lot with an assessment of \$72,800. 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 dwelling's A 0.90 grade should be returned to B 1.00 as it was prior to the Town's 1998 update;
- (2) the quality of the home, particularly the interior, does not justify the increase to the A 0.90 grade;
- (3) an analysis of comparable assessments indicate the assessment should be lower;
- (4) adjusting the 1998 updated value of \$329,300 by the 1999 assessment ratio of .92 indicates a lower assessment; and
- (5) averaging these three different analyses indicates a proper assessment of \$301,300.

The Town argued the assessment was proper because:

- (1) based on an analysis of five comparable sales the assessment is reasonable;
- (2) the Taxpayers' comparables generally involve smaller houses;
- (3) the Taxpayers did not submit an independent estimate of market value; and
- (4) the Taxpayers' assessment-to-sales ratio study is not accurate in that the Taxpayers did not know whether certain sales were included or not.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Town's assessment was disproportionate for the following reasons.

Following a hearing on May 9, 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 Taxpayer, and each has had an opportunity to file further comments with the board. The Taxpayers and the Town filed

comments on September 8 and 11, 2000, respectively.

In this and other property tax appeals, 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, 38 N.H. 261, 265 (1994). 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 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. Id. at 65.

Consequently, the board's decision, in this case, as with 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 third step of determining 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 by 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 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 Amherst.

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

Market Value

As stated earlier, proportionate assessments are a product of market value and the municipality's level of assessment. The Taxpayers' evidence focused primarily on a comparable assessment analysis and an adjustment of the building grade. The Taxpayers did no analysis

relative to the Property's market value.

Because the board has found that the appropriate level of assessment for 1998 was .94, an indicated market value of \$350,319 for the Property is derived by dividing the assessment of \$329,300 by .94. The board finds the Taxpayers did not submit evidence to show that the indicated \$350,000 (rounded) market value was disproportionate.

The board has utilized the five sales submitted by the Town and five of the six recently-sold comparables submitted by the Taxpayers to determine a time-adjusted, per-square-foot value. See Appendix A. The sales indicate a per-square-foot market value range of \$86.18 to \$112.97 with a median of \$98.96 per square foot. The indicated market value per square foot of the Taxpayers' equalized assessment is \$91.40 ($\$350,319 \div 3,833$ square feet). This indicated per-square-foot value is at the low end of the value range for the comparable sales (\$86.18 - \$112.97) and certainly below the median of the ten sales (\$98.96). The board finds this is reasonable and reflects both the larger gross living area of the Property compared to most of the sales and the Taxpayers' argument that the Property is perhaps of slightly lower quality than some of the comparables. The board recognizes the Town's methodology does not reflect this quality difference and that some of the Town's assessment practices are inconsistent. However, despite these inconsistencies, the resulting assessment appears proportional to the market data submitted. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

The Taxpayers, upon questioning by the board, stated their opinion of the Property's market value was \$300,000 to \$315,000 as of April 1, 1998 (depending on the need for

improvements, i.e., painting and carpeting). The board finds this opinion of market value, when analyzed on a price-per-square-foot basis, falls outside the range of all market evidence submitted, and therefore gave it no weight ($\$315,000 \div 3,833$ square feet = $\$82.18$ per square foot; $\$300,000 \div 3,833$ square feet = $\$78.27$ per square foot).

Finally, 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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

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Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Daniel and Marilyn Fenton, Taxpayers; and Chairman, Board of Selectmen of Amherst.

Date: November 20, 2000

Lynn M. Wheeler, Clerk

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APPENDIX A

Daniel and Marilyn Fenton

v.

Town of Amherst

Docket No.: 17921-98PT

ORDER

This order responds to the “Taxpayers’” December 19, 2000 Motion for Reconsideration and Rehearing (“Motion”) of the board’s November 20, 2000 decision (“Decision”). For the reasons that follow, the board denies the Motion.

Despite the Taxpayers’ assertions on page 1 of their Motion, the board did not make a market value determination of the Taxpayers’ property. Rather, the board determined, based on market evidence submitted by both sides, that the Taxpayers had not carried their burden to show that the indicated market value (arrived at by equalizing the assessment) was in excess of the market value indications of the ten sales comparables submitted by the parties.

Among other things, the Taxpayers cited, for the first time in the Motion, Appeal of

Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980) in support of their assertion that the single “matter at issue” is disproportionality, and thus, market value is not relevant. We disagree with the Taxpayers’ interpretation and application of Public Service. The central issue on appeal in Public Service was whether an earlier judgment acted as an estoppel to a subsequent appeal. The court found that whether a taxpayer pays a disproportionately higher tax than other taxpayers is a “matter in issue” and acts as an estoppel whereas, determination of market value is but a “matter in evidence” and does not alone estop a subsequent appeal. Estoppel is not a factor in this appeal, and thus, the main import of Public Service does not apply in this case.

In essence, and as the board ruled, the “matter in issue” in tax cases is “disproportionality.” Determining disproportionality, using the terminology of Public Service, involves the interplay of three general “matters in evidence:” 1) determining what is taxable real estate; 2) determining the real estate’s market value; and 3) determining the municipality’s general level of assessment. Consequently, for the reasons explained in the Decision at page 3, the Taxpayers’ burden was to show that the Town’s assessment was disproportionate based on an estimate of the Property’s market value and the Town’s general level of assessment. They did not make such a showing. The Taxpayers’ arguments focused primarily on assessment data rather than market data. The board, after ascertaining the sales prices of five of the Taxpayers’ six assessment comparables and analyzing them in conjunction with the Town’s five sales comparables, determined this general market data supported the assessment.

The Taxpayers also raised a number of arguments relative to the Town’s inconsistent assessing methodology and that those inconsistencies resulted in the Taxpayers being

disproportionally assessed. As the board noted on page 6 of the Decision, even if, for argument purposes, the Town's assessment methodology was incorrect, the board did not find the errors resulted in the assessment being disproportional. While the board also has concerns about some of the Town's assessing practices and is ordering a reassessment pursuant to its RSA 71-B:17 jurisdiction (see attached order), those matters do not prove the Taxpayers' assessment is disproportionate.

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

Michele E. LeBrun, 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 Daniel and Marilyn Fenton, Taxpayers; and Chairman, Board of Selectmen of Amherst.

Date: February 16, 2001

Lynn M. Wheeler, Clerk

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