

Bruce E. and Sandra Fraser

v.

Town of Amherst

Docket No.: 17928-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the 1998 assessment of \$220,500 (land \$81,200; buildings \$139,300) by the Town of Amherst ("Town") on a 0.36-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 3, 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 this as in 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,

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 argued the assessment was excessive because:

- (1) compared to five other similar “antique” houses in the Town (all constructed before 1850), the Property is overassessed in terms of values per square foot of livable area: an assessed value of \$110 per square foot for the Property compared to a range of \$61 to \$87 for these five houses;
- (2) compared to nine other houses that sold in 1997 or 1998, the Property was assessed at 102% of its sales price (\$220,500/\$217,000), higher than the range of 95% to 101% for the others; and
- (3) the correct assessed value of the Property should have been \$186,300 rather than \$220,500.

The Town argued the assessment was proper because:

- (1) the Property was purchased in September, 1997 for \$217,000, which was a “fair” price in an “arms-length” sale;
- (2) the house was built in 1840, renovated in 1951 and is in “excellent” or “Grade A” condition, deserving of only 15% physical depreciation, as reflected on the valuation report; and
- (3) properties in the Town appreciated in value at an annual rate of about 6 percent (in 1997 and 1998), justifying the assessed value of \$220,500 when an equalization ratio of 0.98 is used.

Board's Rulings

The Property was assessed at \$164,800 in 1994. In that year, the Town performed a full revaluation, including inspections of all properties. In 1998, the Property's assessed value was initially increased to \$222,000, and then adjusted to \$220,500 (for a “corrected story height”). Based on the evidence, the board finds the proper assessment to be \$211,500, for the reasons

discussed below.

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. 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 Amherst.

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

Market Value

In lieu of direct evidence of market value, the evidence presented to the board by the Taxpayers to sustain their burden of proving disproportionality consisted mainly of the assessed values of 5 comparable "antiques" within the Town. For each of these five properties, the Taxpayer provided the assessment-record cards, which included the assessed values of these

properties from 1994 and 1998. When questioned by the board, the Taxpayers argued the proper assessed value of the Property in 1998 should be \$186,300, based on a computation of the average of the “absolute difference” in the assessed values of these five properties between 1994 and 1998 (roughly \$21,500) and adding it to the Property’s 1994 assessed value (\$164,800).

While the board understands the Taxpayers’ argument and computation, there are problems with this methodology since the five comparables had substantially larger living areas (square footages ranging from 2,551 to 3,322 compared to 2,011 for the Property) and also varied in grade and condition. It is also not clear why the Taxpayers chose to apply average “absolute” differences rather than percentage changes in the assessed values. Finally, even if the increases in the assessed values of these properties was less than for the Property (whether in “absolute” or percentage terms), such facts, if established, 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 owned by the Taxpayers. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987).

The Town argued the higher assessed value of \$220,500 was correct, basing its arguments on market values and the general level of assessment. The Town’s reported equalization ratio in 1998 was 0.98. If this ratio were valid, the assessed value of each property would generally be about 98% of its market value. And further, assuming the ratio of .98 is correct, for the \$220,500 assessment to be correct, the market value of the Property would have to have been \$225,000 as of April 1, 1998, an increase of about 3.7% from its sales price

(\$217,000) seven months earlier.

The sales price of a property is one indication of its market value, but is not necessarily conclusive on this point. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). If the sale is at “arms length,” however, it is commonly agreed to be one of the “best indicators” of value. Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). The Taxpayers provided no evidence to rebut the Town’s conclusion that the sale was not at “arms length” or that the price of \$217,000 did not accurately reflect the market value of the Property in September, 1997. Since there was evidence that property values in the Town were rising by an annual rate of six percent in this period, the assessed valuation of \$220,500 would appear to be reasonable if an equalization ratio of 0.98 is used ($\$220,500 \div .98 = \$225,000$ indicated market value).

However, as noted above, the Report prepared by the board’s review appraiser uncovered evidence of both “selective” and “irregular” appraisal practices within the Town and uses approved IAAO techniques to conclude a more accurate adjusted median equalization ratio for the Town should have been .94 rather than .98. When a .94 ratio is applied to the indicated market value of \$225,000, the assessed value computation falls to \$211,500.

Conclusions

In the absence of more compelling evidence of market value, the board concludes the assessed value of the Property as of April 1, 1998 should have been \$211,500 and that the Taxpayers are entitled to an abatement to this amount.

If the taxes have been paid, the amount paid on the value in excess of \$211,500 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

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 Bruce E. and Sandra Fraser, Taxpayers; and Chairman, Board of Selectmen of Amherst.

Date: November 20, 2000

Lynn M. Wheeler, Clerk

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