

**Axel and Mary Margaret Wirth**

**v.**

**Town of Amherst**

**Docket No.: 17938-98PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$215,400 (land \$53,300; buildings \$162,100) on a 1.2-acre lot with a single-family home Property"). For the reasons stated below, the appeal is denied.

Following a hearing on May 2, 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 Taxpayers submitted comments on the Report in a letter to the board dated September 10, 2000 and the Town also submitted comments in a letter filed with the board 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. Despite the submission of extensive evidence on other points and issues, we find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property's assessment was increased disproportionately compared to other properties in the neighborhood;
- 2) the relationship between sales prices and assessed values is not consistent with the Town's equalization ratio;
- 3) the Town arbitrarily increased the square footage, the construction grade and the condition of the Property from the 1994 revaluation to 1998; and
- 4) the proper assessment should be \$185,700.

The Town argued the assessment was proper because:

- 1) six comparable sales, occurring between August, 1997 and June, 1998, support the assessment;
- 2) the Property was purchased in November 1997 for \$238,000; and
- 3) the Town partially abated the assessment at the request of the Taxpayers and further abatement is unjustified at this time in light of the market value of the Property.

### **Board's Rulings**

The board denies the Taxpayers' appeal for the reasons explained below.

The Property was assessed at \$181,600 in 1994. In that year, the Town performed a full revaluation, including inspections of all properties. The Taxpayers purchased the Property in November, 1997, well after this revaluation, but now contend the 1994 assessment was incorrect due to several errors (wrong date of construction and no basement under family room) and should have been \$170,700. In 1998, the Property's assessed value was initially set at \$233,800, and then abated to \$215,400. While the Taxpayers argue the Town's records still appear to reflect this and other arguably incorrect descriptions regarding "physical data" (story count, construction grade and physical condition), they may not be material to the ultimate issue of whether the Property is being properly assessed, especially in light of the abatement already granted by the Town. In other words, the claimed errors noted by the Taxpayers may be innocuous if they did not result in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

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) indicating 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

The evidence presented to the board by the Taxpayers included the 1994 and 1998 assessed values for 25 properties in the neighborhood (Cricket Hill Drive and Town Crier Road) and their conclusion that the increase in assessed value for the Property (29 percent) was well in excess of the average increase for these 25 properties (7.3 percent). The Taxpayers also presented evidence to suggest that assessments were increased on properties in the Town that were sold prior to the end of the year. This evidence mirrors, to some degree, the findings in the Report.

Nevertheless, for purposes of this appeal, the Taxpayers' heavy reliance on relative increases in assessed values within the neighborhood of the Property is somewhat misplaced. This data may reflect no more than that other properties in the neighborhood are *underassessed* relative to the Town as a whole rather than that the Property is being *overassessed*. The

underassessment of certain other properties does not prove the overassessment of the Property owned by the Taxpayers or that the Taxpayers are being asked to pay more than their fair share of taxes. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). If such other properties (in the Cricket Hill/Town Crier or other neighborhoods) are being underassessed, the correct remedy should be to raise their assessments, not reduce the assessment of the Taxpayers, which would be unfair to other property owners in the Town who are expected to pay their taxes on assessments based on present market value.

Of more relevance is any evidence directly bearing on the market value of the Property. The Taxpayers purchased the Property in November, 1997 for \$238,000. There is no evidence that the sales price they paid did not ‘indicate its fair market value’ at that time. See Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988)(absent conflicting evidence, “the sale price of a piece of property indicates its fair market value”). There is also no evidence that property values declined from that date to April 1, 1998, or, for that matter, to the present time.

Appraisal of fair market value is aided by a comparison of two other sales submitted by the Taxpayer (19 Cricket Hill Drive in October, 1998 for \$232,000 and 4 Town Crier Road in November 1998 for \$236,500). Even without a time correction, the sales prices reflect a price per square foot of \$96.35 and \$90.34, respectively, which compares favorably with both the Property’s sale price of \$90.84 per square foot and the equalized assessed value of \$87.46 per square foot ( $\$215,400 \text{ assessed value} \div .94 \div 2,620 \text{ square feet}$ ). The Town’s six comparable sales, again without a time correction, reflect a price per square foot range of \$84.50 to \$110.43,

which compares quite favorably with \$90.84 for the Property on the issue of market value.

As noted above, the Report raised questions about the Town's use of .98 as a valid equalization ratio to be applied to property values in 1998 and concluded a ratio of .94 would be more appropriate. The Property's assessed value of \$215,400 reflects an equalized market value of approximately \$220,000 using the .98 equalization ratio the Town claimed for 1998. If the equalization ratio is reduced to .94, the equalized market value estimate is approximately \$229,000. Both of these indications of market value are below the price paid by the Taxpayers in November, 1997.

### Conclusions

In conclusion, despite the considerable input provided by the Taxpayers (in the form of data, graphs and tables), the board finds no basis for adjusting the assessed value below the level already abated to by the Town (\$215,400), because this assessment reflects a market value for the Property well within the limits of acceptability when all relevant factors are taken into account.

The "selective" and "irregular" appraisal practices discussed in the Report raise concerns, however, 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

---

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Axel and Mary Margaret Wirth, Taxpayers; and Chairman, Board of Selectmen of Amherst.

Date: November 20, 2000

---

Lynn M. Wheeler, Clerk