

**Douglas and Martha Chabinsky**

**v.**

**Town of Amherst**

**Docket No.: 17945-98PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$205,400 (land \$81,600; buildings \$123,800) on a .39-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal 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 disproportionate because:

- (1) the assessed value of the Property increased substantially (approximately 41%) between 1994 and 1998, at a time when the average increase in assessed values for a sample of Town properties that sold (changed ownership) was 27.3%, compared to 5.9% for properties that did not sell;
- (2) although the Property was purchased on August 29, 1997, for \$215,000, the Taxpayers paid 20% more than it was worth at that time;
- (3) costly improvements and an addition (“improvements”) in an “antique” home (built in 1802) only partially completed by April 1, 1998, do not necessarily add to the Property’s market value on a dollar-for-dollar basis; and
- (4) the Town incorrectly rated the walls as “plaster” rather than sheet rock, resulting in a higher assessment.

The Town argued the assessment was proper (except for the wall rating noted above, which it conceded was incorrect at the hearing), because:

- (1) the Property is located in the “village” area of the Town, where market values are at a “premium”;
- (2) properties in the Town appreciated in market value at an average annual rate of at least 6 % in 1997 and 1998, further justifying the assessed value of \$205,400 when the equalization ratio is applied; and

(3) the Town only added 23% of cost of the improvements in determining the assessed value, rather than applying the full cost.

### **Board's Rulings**

The Property was assessed at \$145,400 in 1994. In that year, the Town performed a full revaluation, including inspections of all properties. In 1998, the Property's assessed value was increased to \$205,400, apparently to reflect market appreciation and the partial completion of substantial improvements undertaken by the Taxpayer.<sup>1</sup> The Town conceded at the hearing a mistake in rating the walls as "plaster" rather than sheet rock. This mistake resulted in a \$2,352 positive adjustment prior to application of a 25% physical depreciation factor. The corrected assessed value, based on this concession, is \$203,600 (rounded)[\$205,400 less (\$2,352 times .75)].

The board must now determine whether this corrected assessment of \$203,600 for the Property as of April 1, 1998, is proportionate or disproportionate. 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

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<sup>1</sup>From the information in the board's file, it appears that in 1999, when these improvements were 'completed,' the Town raised the assessed value of the Property to \$211,900.

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 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 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 the Town.

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

#### Market Value

The issue of market value is somewhat complicated in this case because the Taxpayers claim the purchase price they paid is well above that value and because of substantial improvements they made to the Property after purchase but before the assessment date. The Taxpayers admit they purchased the Property for \$215,000 at the end of August, 1997, but contend they "overpaid" by about 20 percent, apparently because of a special interest they had in acquiring the Property and the renovations they planned to make to improve its size and desirability.

As explained below, the board finds some evidence of overpayment, but not to the extent contended by the Taxpayers. The board also finds the Town took this consideration into account in making its assessment. To arrive at market value, several computations are helpful. First, if the assessed value of these improvements partially recognized by the Town is excluded, the corrected and adjusted assessed value of the Property as of April 1, 1998, becomes \$191,500 (rounded) [\$203,600 less \$12,124], which indicates an equalized market value of \$203,700 (rounded) [\$191,500 divided by .94]. This indication of market value reflects a substantial discount (\$11,300) from the price paid by the Taxpayers. Second, the sales comparables submitted by the Town (in Municipality Exhibit "A") ranged in price from \$217,000 to \$238,000 for properties with considerably larger gross living areas than the original 1,540 square feet of the Property, which is also evidence the Taxpayers may have overpaid somewhat. Third, while 12 years elapsed since the prior sale of the Property in July, 1986, the purchase price (paid by the preceding owner) at that time was \$169,000. On the other hand, the Town indicated properties in the Town were appreciating in value by, on average, six percent per year in the 1997 and 1998 periods and this appreciation factor also impacts on market value.

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). There is no dispute the sale of the Property to the Taxpayers was at "arms length" and no evidence the Taxpayers were under any undue duress when they paid \$215,000 for the Property. Nonetheless, it appears the Town

set an assessed value (\$191,500, before consideration of the improvements) reflective of a market value (\$203,700) somewhat below the sales price.

What remains to be considered is the effect on market value of the improvements costing a total of \$53,000 which were partially completed by April 1, 1998. The Valuation Reports submitted by the Town indicate the Town recognized the improvements would add value on less than a dollar-for-dollar basis. The Town applied only a fraction of the total costs [estimating the 'replacement cost new' ("RCN") of the improvements at \$24,870] and only increased the assessed value of the improvements by \$12,134 as of April 1, 1998 (when they were partially completed). The assessed value thus represents approximately 23% of the total cost.<sup>2</sup>

As noted above, when \$12,134 of partially-completed improvements are added, the corrected assessed value becomes \$203,600 (rounded). If an equalization ratio of .94 is applied to the corrected assessed value of \$203,600, the indicated market value of the Property would be \$216,600 (rounded). This amount is above the purchase price (\$215,000) paid by the Taxpayers, to be sure, but is reflective of substantial improvements which increased the gross living area of the Property by almost one-half (756 square foot addition to original 1,540 square feet). This indicated market value also appears to be reasonable even without considering the impact of average market appreciation (3.5 percent for seven months).

In summary, while the Taxpayers may have overpaid somewhat when they purchased the

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<sup>2</sup>Even when these improvements were completed during the subsequent tax year, the Town apparently increased the assessed value of the improvements to only \$18,653 on its Valuation Report, about 35% of the total cost. To obtain assessed value, the Town did not apply the full actual cost (\$53,000) or replacement cost estimate (\$24,870), and even adjusted the latter further with a 75% 'physical obsolescence' factor.

Property, they failed to prove that the market value of the Property was below \$216,600 as of the

assessment date. Applying a .94 equalization ratio to this estimate of market value, the board finds the corrected assessment of \$203,600 is not disproportionate.

Aside from market value, the Taxpayers presented evidence of differences in assessment increases among neighboring properties<sup>3</sup> to support their overassessment arguments. This evidence, however, 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).

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<sup>3</sup>The Taxpayers noted that the assessed value of the Property increased substantially between 1994 and 1998 (from \$145,400 to \$205,400, an increase of approximately 41 %). They also presented evidence that Town properties which sold in 1997 or 1998 increased in assessments at a higher rate than Town properties that did not have a change in ownership. This conclusion is mirrored in the findings of the board's review appraiser. See Report at p. 14 (between 1997 and 1998 the average change in assessed value for sold properties in the Town

Conclusions

The board finds the assessed value of the Property as of April 1, 1998, taking the wall correction conceded by the Town into account, should have been \$203,600 and the appeal for abatement is granted to this amount.

If the taxes have been paid, the amount paid on the value in excess of \$203,600 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, after taking into account the effect on value of the completion of the improvements, 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.

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

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was approximately 50% that for unsold properties: 15.36 % compared to 10.12 %).

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

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Paul B. Franklin, Chairman

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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 Douglas and Martha Chabinsky, Taxpayers; and Chairman, Board of Selectmen of Amherst.

Date: November 20, 2000

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Lynn M. Wheeler, Clerk

**Douglas and Martha Chabinsky**

**v.**

**Town of Amherst**

**Docket No.: 17945-98PT**

**ORDER**

This order responds to the “Taxpayers’” December 19, 2000 motion for rehearing (“Motion”), which is denied. For clarification purposes, the board responds to several of the issues raised by the Taxpayers in the Motion.

First, the board found in its November 20, 2000 decision (“Decision”) that the Taxpayers overpaid for the property but not to the extent argued by the Taxpayers. Further, the board found the assessment was not necessarily predicated upon the sale price and was indeed significantly lower than the selling price. The “Town’s” 1998 assessment included an approximate \$12,124 increase in assessment due to the partial renovations that had occurred prior to April 1, 1998, but subsequent to the Taxpayers’ August, 1997 purchase. Consequently, no updated assessment was ever performed by the Town to reflect the property in 1998 without the renovations. The board, on page 6 of the Decision, estimated that assessment would have been \$191,500 if the

renovations had not occurred. Because that estimated assessment was significantly less than the Taxpayers' purchase of \$215,000, it indicated the Town's "assessment base" before renovations was not predicated upon the sale price.

The Taxpayers also raised concerns in the Motion relative to errors in the Town's assessment update. These concerns and those of other Amherst taxpayers prompted the board to initiate a reassessment investigation which resulted in a separate order (copy attached) ordering a reassessment pursuant to the board's jurisdiction contained in RSA 71-B:16.

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

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Paul B. Franklin, Chairman

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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 Douglas and Martha Chabinsky, Taxpayers; and Chairman, Board of Selectmen of

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Date: February 16, 2001

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Lynn M. Wheeler, Clerk