

George A. Soffron and Andrea M. Young

v.

Town of Amherst

Docket No.: 17953-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$436,800 (land \$91,300; buildings \$345,500) on a .44-acre lot with a single-family home (the "Property"). 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. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) no changes were made to the Property between 1997 and 1998 yet the assessment increased from \$308,100 to \$436,800;
- (2) there is no baseboard heat on the second floor;
- (3) commercial properties near the Property negatively impact its market value;

(4) although no changes were made to the dwelling or structures of the Property, the grade, condition and depreciation schedules were all changed after the sale in May 1998 resulting in increases in the assessment;

(5) there is a “sister” property not far from the Property that is nearly identical in many ways including the area of the house lot and the design, size and configuration of the house; yet the assessment of this “sister” house was calculated differently, resulting in a much lower assessment; and

(6) a reasonable assessment would be one that “split the difference” between the prior assessed value of \$308,100 and the 1998 assessment of \$436,800 or \$372,450.

The Town argued the assessment was proper because:

(1) commercial structures nearby do not diminish the Property’s value and sales prices would reflect any deterrents to market value if they did exist; and

(2) a survey of sales of similar properties shows the Property is not disproportionately assessed.

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. The Taxpayers did not file comments relative to the report.

Board's Rulings

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. (A property's assessment, therefore, is not unfair simply because it exceeds the property's market value.) The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. During the hearing, the Taxpayers stated the Property's May 1998 selling price of \$457,000 was its market value, but that the Property was disproportionately assessed. It should be noted that the Taxpayers listed the Property's market value at \$348,040 on their appeal form. This number was determined by taking the previous assessment of \$308,100 and adding 13% for the average increase of "Amherst Village neighborhood properties." Using an average increase in assessment or sales as done by the Taxpayers is not an appropriate or conclusive method of establishing market value since averaging ignores the unique characteristics of individual properties. Analyzing, comparing and weighing sales data and then correlating the most pertinent aspects of the sales to the Property is a more appropriate method to determine market value.

Additionally, the Taxpayers also raised concerns that the Property's increase in assessment was disproportionate to other properties in the neighborhood, especially one comparable that was very similar to the Property. Increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). Also, the underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Cannata, Jr., 129 N.H. 399, 401 (1987).

Further, the Taxpayers are reminded of their burden to prove disproportionality through a correlation of the market value of the Property and the general level of assessment in the community.

The Taxpayers testified the Property's sales price was \$457,000 in May of 1998. Where it is demonstrated that the sale was an arm's-length market transaction, the sales price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 255 (1994). The Taxpayers did not present any evidence to indicate the selling price of the Property was not representative of market value or that the transaction was anything other than an arm's-length sale. Consequently, the board finds the sale price is the best evidence submitted of the Property's market value. To equate market value to assessed value requires the application of a factor that represents the municipality's level of assessment. The review appraiser's Report in this case determined the Town's proper level of assessment for 1998 was .94. 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.

Therefore, to determine whether the Property is disproportionately assessed the board has compared the Town's equalized assessed value [\$464,700 (rounded)], determined by dividing the assessment (\$436,800) by the revised equalization ratio (.94), to the sales price (\$457,000). The board finds the difference between these two values is negligible (less than 2%) and no change to the assessment is warranted. There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See *Wise Shoe Co. v. Town of*

Exeter, 119 N.H. 700, 702 (1979). However, the Town should not infer that the denial of the abatement lends credence to its assessment methodology.

Specifically, 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 George A. Soffron and Andrea M. Young, Taxpayers; and Chairman, Board of Selectmen of Amherst.

Date: November 20, 2000

Lynn M. Wheeler, Clerk