

**Wayne O. and Stevia G. Lynch**

**v.**

**Town of Amherst**

**Docket No.: 17980-98PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment (partially abated<sup>1</sup>) of \$339,400 (land \$83,800; buildings \$255,600) on a 1.59-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, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

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<sup>1</sup>The Town abated the buildings value by \$2,500 in 1998 for the roof - "shingles, wood to asphalt."

The Taxpayers argued the assessment was excessive because:

- (1) standards of assessment were not applied consistently in the neighborhood of the Property and the Town as a whole;
- (2) a drainage easement and a drainage ditch on the Property were not taken into consideration;
- (3) the land is low, swampy and has drainage problems, and therefore, the Property's base lot value should be \$75,000, not \$100,000;
- (4) the "base lot" assessment of \$100,000 is disproportionate; other comparable properties' base lot values have stayed at \$90,000 with no justification for the differences;
- (5) the assessor made multiple changes to the building grade adjustment even though no changes to the Property had occurred;
- (6) among comparable properties in the neighborhood, the assessor's adjustments for building grade, condition, and function and economic obsolescence were very subjective and inconsistent;
- (7) the Property's building assessment has significantly increased; 14% compared to 6% for other properties in Amherst Hills; and
- (8) the building's per-square-foot assessment is higher than comparable properties (Taxpayer's Exhibit #25).

The Town argued the assessment was proper because:

- (1) seven comparable sales show the per-square-foot assessed value of the Property (\$86.10) is well below the assessed values for the comparables;
- (2) building grades within 5% are reasonably consistent and all the Taxpayer's original comparables are within this range; and

(3) the drainage adjustment was “extremely generous” since the drainage problem does not affect the market value of the Property.

Following several hearings during the first two weeks of May, 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 filed their comments at their hearing on August 31, 2000. The Town filed its comments on September 11, 2000.

### **Board's Rulings**

The board finds the Taxpayers did not prove the Property was disproportionately assessed.

In 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. “Our 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. 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.

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. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

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.) The review appraiser's Report in this case relates primarily to the third step of determining the Town's proper level of assessment.

#### 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.

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.

### Market Value

The Taxpayers presented the board with a significant amount of data concerning assessments, sales, gross living area variations, grade variations and differences in ages of multiple properties in the general vicinity of the Property. However, the Taxpayers could not, and did not, correlate the data to show how it impacted the market value of the Property. Additionally, the Taxpayers spoke at length about the specific conditions on their lot which would affect the market value such as the 50-foot drainage easement along the entire frontage on General Amherst Road and a 30-foot drainage ditch along a portion of their frontage on Governor Wentworth Road. Once again, the Taxpayers could not quantify the impact of the easement and the ditch on the market value of the Property. For the board to be able to make an adjustment to the assessment based on these conditions it would be necessary for the Taxpayers to show these conditions on the site impacted the market value of the Property. Further, while these physical conditions may reduce the effective area of the building lot, it is insufficient to describe their existence without giving a market-related estimate of the diminution in value for their presence.

The Taxpayers testified they had no idea of the market value of their Property and that when they purchased the Property, they were interested in the purchase of a lifestyle as well as a residence. The Taxpayers pointed to many inconsistencies and discrepancies in the Town's assessing practices that resulted in houses of similar age, size and location to the Property having

lower assessments on a per-square-foot basis. The board reminds the Taxpayers that evidence that certain surrounding properties may have been underassessed does not prove the Property was overassessed. 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). The Taxpayers testified their Property's building assessment had increased 14% compared to the 6% average increase for other properties in the Amherst Hills neighborhood. Adjustments to assessments are made to remedy inequities and may vary, both in absolute numbers and in percentages, from property to 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).

### Conclusions

As previously stated, the board has determined the 1998 general level of assessment for Amherst was 94%. Therefore, for the Taxpayers to prove disproportionality they would have needed to show the Property's market value was less than the equalized assessed value of \$361,100 (rounded) ( $\$339,400 \text{ assessment} \div .94 \text{ equalization ratio}$ ). The Taxpayers failed to make such a showing and to prove the Property was disproportionately assessed.

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

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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 Wayne O. and Stevia G. Lynch, Taxpayers; and Chairman, Board of Selectmen of Amherst.

Date: November 20, 2000

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Lynn M. Wheeler, Clerk