

Dorothy and Robert J. Davidson

v.

Town of Exeter

Docket No.: 18439-00PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the tax year 2000 assessment by the “Town” of \$260,500 (land \$197,800; buildings \$62,700) on a 0.75-acre lot with a single-family home (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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); and 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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the location of the Property is not desirable because of traffic noise (a “truck route”), proximity to commercial activity (an auto body shop) and adjacent rental residential properties which reduce its value as a single-family home;
- (2) the “Stanhope” market analyses of the Property dated November 24, 1999 and April 1, 2000 prepared for the Taxpayers both support an abatement; and
- (3) Stanhope’s estimate of market value as of April 1, 2000 (\$232,0000) times the Town’s 2000 equalization ratio (0.93) indicates the proper assessment should be approximately \$215,800.

The Town argued the assessment was proper because:

- (1) the Town underwent a revaluation in 1997 and has done annual “updates” since that time;
- (2) the same assessment methodology was applied to all properties in the neighborhood;
- (3) proper adjustments were made for drainage and other conditions on the assessment record card for the Property;
- (4) a study of comparable properties indicates the Property was not over-assessed; and
- (5) the Taxpayers failed to sustain their burden of proof.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$221,300.

Following the hearing held on February 5, 2002, the board directed an inspection of the Property and a report be prepared by a staff review appraiser, pursuant to its authority under RSA 71-B:14. The review appraiser, Cynthia L. Brown, filed a report dated April 24, 2002 (the “Report”), estimating a market value of \$238,000 for the Property as of April 1, 2000 and, applying the Town’s 0.93 equalization ratio, a “reasonable and equitable assessment of [approximately] \$221,300.” Report at p. 6. The board permitted the parties an additional period

of time to file comments on the Report. Neither party filed a response.

The board finds the Report contains the best estimate of value. The review appraiser performed an interior and exterior inspection of the Property, took photographs, examined the deed and other available documents, found three comparable sales and applied the sales comparison approach, concluding it was the “most reasonable method of valuation.” Id. at p. 4.

The board finds the evidence presented by the Taxpayers and the Town to be less probative. The two Stanhope analyses, for example, somewhat contradict the Taxpayers’ arguments, as the Town pointed out, by concluding there were “No neighborhood factors observed that would adversely impact marketability” of the Property. See Taxpayer Exhibits 1 and 2. Although prepared just five months apart, the two analyses share only one comparable (165 Brentwood Road), with no explanation given as to why two different comparables were used in each analysis. Moreover, the two analyses reflect inconsistencies in describing the one common comparable (“similar” versus “inferior” location descriptions for 165 Brentwood Road).

The Town’s defense of the assessment was also less than complete. The Town’s Assessor admitted at the hearing he did not inspect the Property in either arriving at or reviewing the correctness of the assessment. He also attempted to defend the assessment by pointing to the similarity of increases in assessments between the Property (1.057% increase between tax years 1999 and 2000) and four other “ranch style” properties (1.057% to 1.062% increases). Municipality Exhibit A at p. 1. Comparing rates of increase in assessments of similar style homes, however, is not probative of how reasonable each assessment is in relation to market

value, which is the touchstone of a valid assessment.¹

In summary, the board believes an abatement is warranted and the assessed value of the Property should be reduced to \$221,300. In reaching its decision, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. While the Town's assessment record cards separate land value and building value, the board has not made this allocation but expects the Town to do so in accordance with its assessing practices.

If the taxes have been paid, the amount paid on the value in excess of \$221,300 for tax year 2000 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 tax year 2001. Until the Town undergoes a general reassessment, the Town shall use the ordered

¹ CF. Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985) ("settled law that a town is obligated to assess all lots of land at the same percentage of fair market value. Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 206, 46 A. 470, 473 (1899). It is impermissible to maintain a class of real estate that is assessed at a higher level than other real estate, whether that class consists of one parcel or half the town. It is therefore irrelevant that all assessments within one such class may be uniform. Widespread disproportionality is no defense.")

assessment for subsequent years with good-faith adjustments under RSA 75:8. See RSA

76:17-c, I.

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

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: Dorothy and Robert J. Davidson, Taxpayers; and Chairman, Selectmen of Exeter.

Date: August 7, 2002

Anne M. Bourque, Deputy Clerk