

Sharon Castello

v.

Town of Haverhill

Docket No.: 18497-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$138,100 (land \$15,200; buildings \$122,900) on a 1.2-acre lot with a mixed commercial-residential use structure and various outbuildings (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) two independent, professional appraisals estimated the Property's market value at between \$97,000 in late 1997 or early 1998 and \$115,000 on October 29, 1999;
- (2) the Town was revalued for the 2000 tax year and the initial assessment placed on the Property was \$214,600, a value inconsistent with the appraised values;
- (3) at the informal reviews, held after the revaluation, the Town reduced the initial assessment to \$138,100; the magnitude of this reduction is an indication of poor workmanship on the part of the revaluation company;
- (4) in the Property's immediate neighborhood, there are some poorly maintained homes as well as the old court house which is vacant and depreciating quickly; and
- (5) the assessment should be based on the most recent appraisal's market value of \$115,000.

The Town, at the hearing, offered a revised assessment of \$122,600 and argued the revised assessment was proper because:

- (1) the difference between the Taxpayer's appraised value (\$115,000) and the Town's revised value may be due to the Taxpayer's appraiser's use of interior measurements rather than the exterior measurements used by the Town to calculate the gross living area of the structure;
- (2) there was some finished living area over the attached garage that was not shown on the original assessment-record card; and
- (3) the revised assessment is consistent with other properties in Town.

Board's Rulings

The board finds the Town's revised assessment of \$122,600 to be the appropriate

assessment for the Property.

When the Taxpayer filed her appeal, she attached correspondence from two real estate appraisers, R. Allen Rutherford, an independent appraiser, and Daniel Martin from New England Appraisal Service. Mr. Rutherford's January 4, 2001 letter outlined his prior appraisal work on the Property, including estimates of value performed in 1996 and late 1997/early 1998. Mr. Martin's October 29, 1999 appraisal, the most recent, was performed for the Woodsville Guaranty Savings Bank. These two appraisals estimated the value of the Property to be \$97,000 and \$115,000 respectively. The Taxpayer testified at the hearing that these two professional estimates of value were the basis for her appeal. The Taxpayer questioned the validity of the revised assessment offered by the Town in light of its assessing history. Initially, the Property was assessed during the 2000 revaluation at \$214,600, after informal reviews were held the assessment was reduced to \$138,100, and now, subsequent to the filing of the appeal, the Town has offered another revised assessment of \$122,600. The Taxpayer questions the validity of the Town's assessment figures and methodology due to these inconsistent and substantial reductions.

The Town's 2000 equalization ratio was .99, which indicates that properties in the Town are assessed at 99% of their market value. The Taxpayer argues the market value of the Property is \$115,000. If the board were to accept that market value estimate and apply the equalization ratio of .99, the indicated assessment would be \$113,850 ($\$115,000 \times .99$). The board finds the difference between the Town's revised assessment of \$122,600 and the Taxpayer's indicated assessment of \$113,850 (\$8,750) may be accounted for in various ways. The Taxpayer's appraiser was instructed not to take into account the rented commercial office space on the first floor, but rather appraise the Property as a single-family residence. The board finds ignoring the

commercial use of this area given its 40-year history of being used as office space (including the current tenant's 20-year occupancy), to be an inaccurate reflection of the Property's market value. While no evidence was submitted as to office rents in the Haverhill/Woodsville area, office space would typically rent for more than residential space. The resulting contributory value of the lower floor may have been underestimated in the Taxpayer's appraisal.

Additionally, given the amount of the first floor area (approximately 31% of the total area of the structure), the board finds a more accurate valuation of the Property would have resulted if the actual contributory value of the office space was considered. The appraisal was prepared for a lending institution and, may be conservative, especially given the Property's age and multiple uses.

The Town testified the revised assessment makes the Property's assessment consistent with all other properties in the Town. While that is appropriate, the board understands the Taxpayer's reservations concerning the quality of the initial assessment and the resulting assessment given that the revisions equate to a change of more than one-third of the initial assessment. If the Taxpayer had not appealed or questioned the initial assessment, she would have been grossly overassessed.

We must determine whether the revised assessment has resulted in the Taxpayer paying an unfair share of taxes. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see

also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Given the difference between the revised assessment proffered at the hearing by the Town, the assessment indicated by the Taxpayer's appraisal \$113,850 (\$115,000 x .99), and the reasons discussed previously, the board finds this 7% difference is not unreasonable.

Therefore, the board finds the Town's revised assessment to be the proper assessment.

If the taxes have been paid, the amount paid on the value in excess of \$122,600 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, the City shall also refund any overpayment for 2001. 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. 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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Sharon Costello, Taxpayer; and Chairman, Selectmen of Haverhill.

Date: April 4, 2002

Anne M. Bourque, Deputy Clerk