

Estelle and Michael O'Donnell

v.

Town of Salem

Docket No.: 18589-00PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$138,300 (land \$60,400; buildings \$77,900) on a 1.09-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.

The Taxpayers argued the assessment was excessive because:

- (1) the only kitchen is in the basement;
- (2) the in-ground pool has several cracked underground pipes and is more than thirty years old;
- (3) the attic is unfinished;

- (4) the garage in the basement is undersized and can not accommodate a modern automobile;
- (5) the base rate for a cape-style home, used on the Property's assessment-record card, should be lower because the Property is different from other capes in the Town; and
- (6) the Property's assessment should be approximately \$120,000 based on a market value estimate of \$129,000.

The Town argued the assessment was proper because:

- (1) the listing of the Property has been corrected based on inspection by the Town and input from the Taxpayers;
- (2) the Taxpayers' use of sales-and-assessment comparisons does not allow for time appreciation occurring between the dates of the sales and the effective date of the appeal (April 1, 2000); property values in Town were appreciating at a rate of between 1½% to 2% per month during this period;
- (3) the Taxpayers misunderstand the context of the word "average" in relation to the Property; it is in "average" condition for its age, not in relation to all other properties in Town;
- (4) there is no garage assessment; and
- (5) the Property was assessed consistently with all other properties during the revaluation.

Board's Rulings

The board finds the Taxpayers' assertions that the Property's market value should be \$129,000, with a resulting assessment of \$120,000 ($\$129,000 \times .93$), is not supported by the evidence.

The Taxpayers raised a number of issues as to why the assessment was excessive.

First, the Taxpayers argued it was improper to assess smaller dwellings at higher per-

square-foot prices. We disagree. Differing square-foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable and proportional taxation (N.H. CONST. Pt. 2, Art. 5) is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

Second, the Taxpayers asserted the Town had incorrectly listed their Property during the 2000 revaluation. The Taxpayers agreed, however, that the Town had, subsequent to its initial listing of the Property, made the factual data corrections to their assessment to properly reflect the Property's physical components. The Taxpayers further asserted the Town had incorrectly listed other taxpayers' properties. Incorrect listing of other taxpayers' properties does not establish that the Taxpayers' Property is improperly assessed. Additionally, the Town indicated it has a policy to review and correct errors when pointed out.

Third, the Taxpayers stated the kitchen of the dwelling is located in the basement, which is a less desirable location than the usual one on the first floor. The board agrees the market would react negatively to this layout. However, the board has reviewed the Town's assessment-record card and finds the 10% functional obsolescence applied to the replacement cost of the entire dwelling adequately accounts for this functional obsolescence. As noted in questions to the Town during the hearing, the effect of the Town's 10% functional depreciation equates to a reduction of about \$11,600 in assessed value which nearly offsets the value added for all the basement finish (with 30% physical depreciation applied) of \$12,300.

Fourth, the Taxpayers pointed out what they believe to be other inconsistencies between

their Property and other properties containing attics or with other properties in average condition. The board finds the differences in story height and attic designations by the Town in the comparables submitted are appropriate given the different roof pitches and the presence or absence of dormers. Further, as the Town explained, the designation of average condition is a term relative to a property's age. Consequently, the Taxpayers' Property was in average condition for a 50-year old home and receives greater depreciation than a home that is 5 years old in average condition. This methodology is consistent throughout the Town's assessment-record cards that were submitted.

Fifth, the comparables submitted by the Taxpayers, where the assessments were higher than the sale prices, are properties that sold one to two years prior to the assessment date of April 1, 2000. The Town testified that during that time period of 1998 to 2000, residential properties were appreciating at a rate of 1½% to 2% per month in a very active market. Consequently, it is appropriate for the 2000 assessments to be higher than the prices of sales that occurred one to two years prior to that date. The board reviewed the sales the Taxpayers submitted and finds the appreciation rate indicated by the difference between the assessed values and the sales prices is consistent with and, in many cases, less than the 1½% to 2% monthly rate testified to by the Town.

Finally, the board recognizes that the assessment process is not necessarily an exact, precise or perfect process; rather, there is an acceptable range of values which, when adjusted by the municipality's general level of assessment, represents a reasonable measure of one's tax burden. "Absolute mathematical equality is not obtainable in all respects if taxation is to [be]

administered in a practical way.” (Citation omitted); City of Berlin v. County of Coos, No. 98-699 (March 1, 2001), ___ N.H. ___, <http://webster.state.nh.us/courts/supreme/opinions/0103/berli033.htm>. The board understands the Taxpayers are frustrated with understanding the mass appraisal process performed by the Town. However, in this case, it appears the Town has attempted to address the Taxpayers’ legitimate concerns, and the market evidence submitted supports the assessment.

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: Estelle and Michael O'Donnell, Taxpayers; and Chairman, Selectmen of Salem.

Date: February 23, 2002

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Anne M. Bourque, Deputy Clerk

Estelle and Michael O'Donnell

v.

Town of Salem

Docket No.: 18589-00PT

ORDER

This order responds to the "Taxpayers'" March 25, 2002 motion for clarification ("Motion"), which is denied.

The Motion stated several characteristics of the "Property" were not considered in the board's decision ("Decision"). In its Decision, the board addressed the Property's overall value rather than the individual components. An abatement is appropriate when a taxpayer can show the market value of a property, when compared to the assessment factored by the town's equalization ratio, is disproportionate. Even though individual components of the Taxpayer's Property (i.e., pool, upper level of the house or the placement of the kitchen in the lower level) are cause for an adjustment to the assessment, the entire property must be considered in the overall value. While the Taxpayers addressed the value of some of the components individually, they did not show the total value of the Property was disproportionate to the Town's abated

assessment.

The Taxpayers argued there were inconsistencies in the Town's assessment methodology, including how depreciation is applied to different properties and that incorrect or conflicting information had been provided to them by the Town and the department of revenue administration which contradicts the Town's actions. However, the Town's testimony persuaded the board the Property had been assessed in a consistent manner with other properties in the Town. If the Taxpayers were going to rely on the statements of others as to the accuracy of the assessment or the assessment methodology, they should have provided sworn affidavits from those persons or subpoenaed them to appear at the hearing for questioning.

The other comments in the Taxpayers' Motion were addressed in the Decision and need not be commented on further.

For these reasons the Motion is denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

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I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Estelle and Michael O'Donnell, Taxpayers; and Chairman, Selectmen of Salem.

Date: May 8, 2002

Anne M. Bourque, Deputy Clerk

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