

**Steven J. and Laura Snelling**

**v.**

**Town of Charlestown**

**Docket No.: 18738-00PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the year 2000 property tax assessment of \$134,300 (land \$21,500; “outbuilding” \$6,200; and residential building \$106,600) by the “Town” on Map 6, Lot 44, a 2.9-acre parcel with a single-family home (the “Property”). For the reasons stated below, this appeal<sup>1</sup> 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.

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<sup>1</sup> One of the Taxpayers owns a commercial property in the Town, which is the subject of another appeal, Docket No. 18737-00PT, heard on the same day (July 11, 2002).

The Taxpayers argued the assessment was excessive because:

- (1) the value of the Property is adversely affected by an abutting commercial automotive repair and restoration business on one side and an active railroad line on another;
- (2) the Town improperly added the cost of a septic system to the land value, but was inconsistent in not making comparable adjustments to other land having hook-ups to the municipal sewer system; and
- (3) the Town's cost estimate in valuing the 1½ story garage should be reduced because there is no stairway access to, or flooring on, the upper half-story and the assessment significantly exceeds market value.

The Town, through its representative Leonard J. Nyberg, Jr., argued the assessment, as corrected on an assessment-record card submitted for the first time at the hearing (Taxpayer Exhibit 2), was generally proper because:

- (1) it indicates a corrected assessment of \$133,100 (slightly below the amount appealed from) which adequately adjusts for the abutting land use factors the Taxpayers assert by applying an economic obsolescence ("Econ Obs") deduction of 5%;
- (2) the cost approach to estimating the garage is valid, but the estimate may require further adjustment because of photographs submitted by the Taxpayers at the hearing (Taxpayer Exhibit 2) showing lack of stairway access or flooring on the upper half-story; and
- (3) the Taxpayers failed to meet their burden of proof on the remaining issues.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment is \$125,300.

The Taxpayers agreed at the hearing that the Town's economic obsolescence adjustment of 5% is adequate to address the abutting land use factors asserted by the Taxpayers. The board will resolve the remaining points of disagreement below.

First, the board is unable to conclude it was improper for the Town to add \$4,500 to the base land value for the septic system installed on the Property. Adding a functioning septic system manifestly affects land use and value, which is the touchstone of proper assessment. See Appraisal Institute, The Appraisal of Real Estate, Ch. 14 "Land or Site Valuation" at p. 323 (11<sup>th</sup> Ed. 1996).

While the board has listened to the Taxpayers' complaint that the Town is not consistent in adding value for septic systems, but not for municipal sewer hook-up improvements, the proper focus in this appeal is not the possible under-assessment of other parcels in the Town, but whether the Property owned by the Taxpayers has been overassessed. Even if the Taxpayers could make a sufficient factual showing regarding this inconsistency, which they have not done (by comparing assessment-record cards on comparable properties with municipal hook-ups, for example), the alleged underassessment of such properties does not prove the overassessment of the Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). The "fair share" of taxes each taxpayer is obligated to pay rests on the relationship between the assessed value and the market value of the Property and how it compares to the general level of assessment in the Town, not on whether one or more other properties may have been underassessed or overassessed. Id. Consequently, the Taxpayers did not sustain their burden of proof regarding this

issue.

Second, the Taxpayers presented no evidence of how the two-car garage affected the market value of the Property, except to state, with no evidentiary support, that garages in the Town increased market value by a range of “5,000 to \$8,000.” The board does not find this bare statement to be probative on this appeal.

The board finds, however, the Town’s corrected assessment-record card (Taxpayer Exhibit 2) overstates the value of the garage, a conclusion the Town has now adopted. The Town’s prior estimate of \$18,720 (before application of depreciation and economic obsolescence) was apparently computed by multiplying the 624 square feet by the “G2” base rate of \$20 per square foot and a 1.5 factor (on the assumption the garage is a fully-useable 1 ½ story structure). The Town conceded at the hearing, however, that its “G2” designation is not appropriate where, as demonstrated by the Taxpayer’s photographs, there is no stairway access to, or flooring on, the upper half-story.

Just prior to the issuance of this Decision, the Town submitted a letter dated July 19, 2002 in a separate appeal involving one of the Taxpayers. See fn. 1 supra. The Town enclosed with that letter a revised assessment-record card for the Property, changing the garage designation to “G1” and applying the lower base rate of \$14.50 per square foot. This change, made unilaterally by the Town, results in a revised estimate of \$9,048 for the garage and a total assessment of \$125,300 for the Property.<sup>2</sup> The board finds this change to be reasonable in light

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<sup>2</sup> Perhaps due to a rounding error, the Town’s “Backland” valuation is shown as \$2,500, \$100 higher than the amount on the prior assessment record card (Taxpayer Exhibit 2). This difference does not appear to be material in amount.

of the evidence presented. While it is somewhat commendable for the Town's Assessor to make this change voluntarily, presumably because of the Taxpayers' presentation at the hearing, the board wonders why the correction could not have been made earlier.

In 2000, the Town's equalization ratio was 1.01. An assessment of \$125,300, therefore, reflects a market value estimate of slightly more than \$124,000. The Taxpayers presented no evidence that the market value of the Property was less than \$124,000, but rather focused most of the presentation on the aspects of the assessment discussed above. As emphasized at the hearing, however, the board's ability to grant an abatement must focus on the relationship between assessed value and market value for the Property as a whole, taking into account the general level of assessment in the Town. See Appeal of Net Realty Holding Trust, 128 N.H. 795, 796 (1986) ("the taxpayer had the burden to prove that the city's valuation exceeded fair market value").

In summary, the board finds the assessment for tax year 2000 should be abated to \$125,300 as set forth on the card recently submitted by the Town. If the taxes have been paid, the amount paid on an assessed value in excess of \$125,300 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 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. 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

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Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Steven J. and Laura Snelling, Taxpayers; Chairman, Selectmen of Charlestown; and Leonard J. Nyberg, representative for the Town.

Date: August 8, 2002

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Anne M. Bourque, Deputy Clerk

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