

Steven S. and Anita V. Wolf

v.

Town of New London

Docket No.: 18832-01PT

DECISION

The ATaxpayers@ appeal, pursuant to RSA 76:16-a, the ATown=s@ 2001 adjusted assessment of \$273,100 (land \$79,600; buildings \$193,500) on a 2.90-acre lot with a single-family home (the AProperty@). 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); Appeal of City of Nashua, 138 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 June 2000 purchase price of \$294,000 is not indicative of market value because the Taxpayers, due to a job transfer (from Maryland), had only one weekend to find a home;
- (2) four comparable properties, at least as desirable as the Property, have lower assessments;
- (3) the grade of AExcellent@ assigned to the Property is inequitable when compared to other properties of similar or superior quality, which are graded as AVery Good@; and
- (4) the same builder constructed a number of other houses in the Town, which are larger and are located in Asuperior@ neighborhoods, but have significantly lower assessments.

The Town argued the assessment was proper because:

- (1) the sales price is a reasonable indication of value because the sale was an arm's-length transaction;
- (2) the assessment did not change because of the sale, but rather was established in a prior revaluation (1988) with only a slight increase because of the addition of a shed;
- (3) the Town's representative inspected the Property in March 2001 and reduced the assessment;
- (4) the Town's 2001 equalization ratio was 0.95 and the equalized assessment \$287,473, is still below the sale price;
- (5) the comparables provided by the Taxpayer have different styles, sizes, ages, quality ratings and view factors from the Property and have not sold recently;
- (6) a sales comparison grid, using a 5%-per-year time adjustment, reflects a value range of \$298,100 to \$305,800; and
- (7) the Taxpayers failed to meet their burden of proof.

Subsequent to the hearing, on March 28, 2003, the board viewed the Property, as well as the Taxpayers' and the Town's comparables sales, accompanied by the Taxpayers and Ms. Jesse Levine, administrator for the Town.

Board=s Rulings

The board finds the correct assessment to be \$261,600.

The board bases the revised assessment on an adjustment of the dwelling's grade from excellent to average +20. At the hearing, the Taxpayers testified the house had nice, but not extravagant, features and had been over-graded. The board's view of the Property confirmed that, although some of the features in the house were above average, many features were average and the overall grade of the house should not be excellent. The board noted a modest amount of tile flooring in the kitchen and a granite countertop on the island in the kitchen; however, the rest of the counters were of laminate construction. Consequently, the board found that, while some features were very good to excellent in quality, the majority of the house had more typical finish; i.e., wood or carpet flooring and plain dimension lumber trim around the doors rather than moldings as normally found in homes of excellent quality. Additionally, some of the wood trim showed average workmanship in its installation, such as around the brickwork in the living room.

At the hearing, the Town testified the selling price was the major factor considered when the abatement was denied. The Taxpayers responded by testifying they were under duress to relocate for job-related reasons (they had only one weekend to find a home) and, therefore, felt they had overpaid for the Property. The Taxpayers also testified they were from out of state

(Maryland) and not knowledgeable about the local real estate market. Further, the realtor they employed was less than objective as she was the wife of the builder. For all these reasons, the board finds that while, in this case, the selling price may be some indication of market value, it is not the most probative evidence and, further, the board finds the revised assessment, factored by the Town's equalization ratio (.95), more accurately depicts the Property's market value.

As previously stated, the board took a view of the Property and the comparables. The view of the comparable sales was helpful; however, without more details about these sales, the board was unable to draw value distinctions between the Property and the comparables.

Based on the evidence, the board has revised the building portion of the cost market valuation section of the assessment-record card by changing the grade index from 1.33 to 1.25 to reflect a grade of average +20 rather than excellent. This results in an adjusted base rate of \$64.17 and a building new value of \$185,258. The board finds the depreciation schedule used by the Town is appropriate and has reduced the building new value by 3% yielding a depreciated building value of \$179,700 (rounded). Adding this figure to the extra features' value, outbuildings value and land value yields a new total assessed property value of \$261,600.

If the taxes have been paid, the amount paid on the value in excess of \$261,600 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 Town shall also refund any overpayment for 2002. 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

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Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Steven S. and Anita V. Wolf, Post Office Box 1975, New London, New Hampshire, 03257, Taxpayers; and Chairman, Board of Selectmen, Town of New London, Post Office Box 240, New London, New Hampshire, 03257.

Date: May 9, 2003

Anne M. Bourque, Deputy Clerk

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Docket No.: 18832-01PT

ORDER

The board has reviewed the “Motion for Reconsideration, Clarification, and for Rehearing” (the “Motion”) filed by the “Town” with respect to the board’s Decision dated May 9, 2003. The Motion is denied, see, generally, RSA 541:3 (“good reason” required to grant rehearing motions) and TAX 201.37, but the board will provide several clarifying comments below.

The Decision reflects the board’s awareness that the Town reduced the initial assessment as a result of the Taxpayer’s abatement application and a physical inspection of the Property. Decision at p. 2, second subparagraph (3). The Town’s willingness to make a slight adjustment, however, does not alter the reliance or emphasis it placed upon the selling price of the Property in the arguments presented to the board and in refusing to grant the Taxpayers a larger abatement.

In a letter to the board dated March 7, 2003, received just several weeks before the hearing, the Town's principal witness, Scott P. Marsh as "Contracted Assessing Agent," stated: "In our opinion, the most important factor the Board should consider is that the applicants purchased the subject property in June 2000 for \$294,000." (Emphasis added.) He went on to state that a simple computation of "the subject's unadjusted sales price [adjusted by the Town's equalization ratio of 0.95] indicates that it should be assessed at \$279,300 as of April 1, 2001."

At the hearing, Mr. Marsh went on to testify regarding the written submission, making it proper for the board to conclude the selling price was a "major factor" relied upon by the Town in supporting the assessment under appeal and explaining why a further abatement was not warranted. See Hearing Tape, commencing at 1764. Among other things, Mr. Marsh testified his oral presentation would "pretty much follow the packet submitted" to the board on behalf of the Town. Id. The first document in this packet is the March 7, 2003 letter quoted above.

While sales prices in general can be good indicators of market value, they may not be conclusive (i.e., the "most probative" evidence) in any given case. See, e.g., Appeal of Town of Peterborough, 120 N.H. 325, 239 (1980) ("sales price alone" is not "sole indicator" of full and true value). For example, in some cases the sale may not have been arm's-length, or the buyer could have underpaid or overpaid for the Property. In this case, one of the Taxpayers acknowledged the sales price, but testified to a number of factors why, in his judgment, the price did not reflect the market value of the Property. The board discussed and weighed these factors in the Decision.¹ Cf. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (because appraisal

¹ In the Motion, the Town seems to fault the board for not 'asking' the Taxpayers at the hearing about "the bank appraiser's opinion of value." This criticism is misdirected: it is up to the

statutes are “silent about the method or combination of methods to be used in making value estimations . . . all relevant factors to property value should be considered when making an appraisal to arrive at a just result. . . . As a quasi-judicial body, the board . . . must assess conflicting evidence, its credibility and the weight to be given the various portions thereof. RSA 76:16-a. (Other citations omitted.)”)

The Town is correct that an indicated market value of \$275,360 (abated value divided by equalization ratio) is approximately \$18,000 less than the sales price. This represents a differential of about six percent, well within the range of tolerances given the many judgments involved in estimating market value. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of New Hampshire, 119 N.H. 919, 921 (1979). The 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, supra at 68 (1975).² The application of judgment is especially appropriate in a case where the Town testified that it had changed assessment firms several times since the prior revaluation and the individual who performed the original assessment did not testify at the hearing.

This fact is also relevant to the grade adjustment made by the board. One of the Taxpayers testified that he had been inside all of the Taxpayers’ comparables and they were

parties, not the board, to develop and present any evidence they believe is relevant; the Town had an opportunity to conduct discovery and develop such evidence, but chose not to do so or to ask the Taxpayers questions about this issue.

² See also RSA 71-B:1; RSA 541-A:33, VI (“The agency’s experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.”); and Appeal of Nashua, 138 N.H. 261, 264-65 (1994); cf. Petition of Grimm, 138 N.H. 42, 53 (1993).

similar in quality, but were assessed at a lower grade by the Town. See also Taxpayer Exhibit 4 (“the subject is Graded ‘Excellent,’ while all other more, recent higher quality Snow Homes are graded ‘Average +20’.”) The Town’s representative, Mr. Marsh, admitted he had not been inside any of the Taxpayers’ comparables and therefore could not comment on the differences in grade assigned by the Town. In short, the Town did not provide any rebuttal evidence on the issue of whether the Property was consistently graded in comparison to other properties in the Town. Since the Taxpayers submitted evidence on this issue, it was incumbent on the Town to respond rather than waiting until a rehearing motion to question the amount of “information needed.”

See also TAX 201.37 (f) (“rehearing motions shall not be granted to consider evidence previously available to the moving [p]arty but not presented at the original hearing”).

The board appreciates the Town’s concerns, especially in light of the revaluation it is presently undertaking.³ Nothing in the board’s Decision should be read to diminish the importance of sales data and other statistics, provided they are used in accordance with accepted property appraisal standards and methods to determine proportional and equitable assessments in the context of a mass appraisal model. On this appeal, however, the board found the Taxpayers carried their burden of proving that factors other than one isolated sales price should be taken into account and applied these factors to grant a modest abatement for tax year 2001.

³ See the Order for Reassessment dated September 4, 2001 in Docket No. 18488-01RA: the Town is undertaking a complete reassessment of all property for tax year 2003, preceded by an update of waterfront-related properties in tax year 2002. The board review appraiser’s role in this process is carefully stated in the Order for Reassessment and need not be amplified upon here.

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Any appeal of the Decision must be filed with the supreme court within thirty days after this Order pursuant to RSA 541:6.

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: Steven S. and Anita V. Wolf, Post Office Box 1975, New London, New Hampshire, 03257, Taxpayers; and Chairman, Board of Selectmen, Town of New London, Post Office Box 240, New London, New Hampshire, 03257.

Date: June 11, 2003

Anne M. Bourque, Deputy Clerk