

**Frank Buselli**

**v.**

**Town of Amherst**

**Docket No.: 23981-08PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$490,100 (land \$217,800; building \$272,300) on Map 008/Lot 090-001, a single family home on 5.10 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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, 138 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) two appraisals of the Property indicate market values of \$459,000 as of March 26, 2008 and \$450,000 as of November 10, 2008;
- (2) both appraisals use the same three comparable sales;

(3) considering the three comparable sales in the Taxpayer's appraisals along with the sale of a nearby property at 34 Walnut Hill Road (Taxpayer Exhibit No. 1), which sold in March, 2009 for \$494,000, a much lower "cost" per square foot is indicated for the Property compared to the Town's assessment; and

(4) an abatement should be granted.

The Town argued the assessment was proper because:

(1) when the changes in the market are taken into account, the appraisals submitted by the Taxpayer actually support the proportionality of the assessment;

(2) simply comparing the "cost" per square foot of living area between the Property, the three comparable sales in the Taxpayer's appraisals and 34 Walnut Hill Road is not a valid method of establishing disproportionality; and

(3) the Taxpayer did not meet his burden of proof.

The parties agreed the level of assessment in the Town for tax year 2008 was 104.9%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence and testimony, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

To determine whether a tax abatement is warranted, the board considers and weighs all of the evidence presented, utilizing its "experience, technical competence and specialized knowledge." See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). Further, in making market value findings, "judgment is the touchstone."

See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Taxpayer presented two primary bases which he testified indicated an abatement for the Property is warranted. First, he submitted two appraisals with effective dates of March 26, 2008 and November 10, 2008 which estimated the Property's market value to be \$459,000 and \$450,000, respectively. Second, he argued the Property's assessed value per square foot of living area is substantially more than for the three comparable sales used in the two appraisals as well as for a nearby, similar property at 34 Walnut Hill Road which sold in March 2009. For several reasons, the board finds the Taxpayer's two arguments do not demonstrate the Property is disproportionately assessed. We will address them separately

The Taxpayer's first argument was that the market value estimates contained in the two appraisals supported his request for an abatement. The board disagrees. Both appraisers relied on the sales comparison approach as the basis for their market value estimates and both used the same three comparable sales in their appraisals. Neither appraiser was called as a witness on the Taxpayer's behalf to explain the assessment methodologies used and adjustments made and to answer questions by the Town and the board regarding the appraisals. But even if their estimates are taken at face value, they do not support the Taxpayer's argument for an abatement.

The first appraisal has an effective date of March 26, 2008 and estimated the Property's market value at \$459,000. Because the effective date of this appraisal (March 26) is only five days from the April 1 applicable assessment date, the board finds its market value estimate to be

a more relevant estimate than the appraisal prepared later, in November, 2008. The board will, however, compare both appraisals' market value estimates to the Town's abated assessment.

Inherent in the assessment of a tax is both a market value determination and a level of assessment determination; said another way, any appeal inherently encompasses both the market value and level of assessment components which need to be addressed jointly to ascertain proportionality. When the \$459,000 market value estimate determined in the March 26 appraisal is multiplied by the Town's equalization ratio for 2008, stipulated by the parties to be 104.9%, the indicated assessed value for the Property is \$481,500 (rounded). This value varies by less than 2% from the Town's \$490,100 abated assessed value. To make a similar comparison using the November appraisal's market value estimate (\$450,000), it is necessary to adjust for the change in market conditions during the period (seven months) between the April assessment date and the date of the appraisal. The change in the Town's median ratios from 2008 to 2009 indicates a market decline of about 8% for the year or approximately 0.67% per month. Trending the November appraisal's \$450,000 market value estimate back to the assessment date yields an April market value estimate of \$471,100 [because \$471,100 divided by 1.047 (reflecting 7 months of depreciation at 0.67%/month) = \$450,000]. Consistent with the methodology applied to the March appraisal, the board multiplied the trended market value estimate of \$471,100 by the Town's 104.9% equalization ratio to yield an assessed value based on the November appraisal of \$494,200 (rounded). This value varies by less than 1% from the Town's abated assessed value. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). Contrary to the Taxpayer's assertion, the board finds the appraisals' market value estimates support the Town's abated assessed value.

The Taxpayer's second argument is that the Property's assessment, on a per square foot basis, should be reduced to be more in line with the selling prices, on the same basis, of the three comparable sales used in both of the appraisals. In support of this argument, the Taxpayer presented calculations indicating the average sale price per square foot of living area of the three comparable sales used in the appraisals was approximately \$139. The Taxpayer compared this value to the Property's \$189.96 assessed value per square foot of living area. The Taxpayer asserted this comparison demonstrated that the Property was significantly overassessed. The board finds this argument fails for several reasons.

If the board were to accept the Taxpayer's methodology, which it has not, and apply the \$139 average selling price of the three comparable sales to the Property's 2,580 square feet of living area shown on the assessment-record card<sup>1</sup>, the resulting value would be \$358,620 ( $\$139 \times 2,580 = \$358,620$ ). This value is approximately \$100,000 below the market value estimates contained in the Taxpayer's two appraisals and is obviously illogically low.

In addition to the three comparable sales used in the appraisals, the Taxpayer submitted the assessment-record card for the nearby property at 34 Walnut Hill Road which sold in March 2009 for 494,000. See Taxpayer Exhibit No. 1. The Taxpayer testified this property was substantially larger and of a better quality compared to the Property and he asserted that the selling price per square foot (\$136.39) and the assessed value per square foot (\$152.07) further supported his claim that the Property was overassessed. When we apply these per square foot values to the Property's living area, the resulting indications of value are \$351,886 and \$392,341, respectively. Again, these value indications are between \$60,000 and \$100,000 less than the two appraisals. The board finds another reason the Taxpayer's methodology fails is that it does not

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<sup>1</sup> The board noted the 2,580 square feet of gross living area shown on the Property's assessment-record card differs from the 2,796 square feet used by both appraisers.

take into account the unique characteristics and influence of the varying lot sizes of the comparable sales. One example of the fact that two lots of very similar size may have characteristics which influence their values in different ways is apparent when the lots at 10 Orchard View Drive and 16 Highland Drive, two of the comparable sales used by both appraisers, are compared. These properties have very similar lot sizes, 4.15 acres and 4.20 acres respectively. However, their assessed values of \$163,400 and \$267,400, respectively, are significantly different. The board finds the Taxpayer's methodology does not account for the unique features in either the land and/or buildings of each of the individual properties and, therefore, produces an unreliable result.

Last, the Taxpayer's four comparables have gross living area substantially larger (2,998 – 3,622 square feet) than the 2,580 gross living area of the Property. Differing square foot values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per square foot prices for smaller dwellings than for larger dwellings, everything else being equal. Since the yardstick for determining equitable taxation is market value (see RSA 75:1), assessments on a per square foot basis should differ to reflect this market phenomenon.

For all these reasons the board finds the Taxpayer failed to carry his burden of proof and the appeal is denied.

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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Frank Buselli, PO Box 598, Amherst, NH 03031, Taxpayer; Chairman, Board of Selectmen, Town of Amherst, PO Box 960, Amherst, NH 03031; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: 7/30/10

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Anne M. Stelmach, Clerk