

Gerhardt Schroeder and Rosalie Nucerino

v.

Town of Londonderry

Docket No.: 13175-92PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$113,400 on a single-family house with lot (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers submitted a brief that presented the Taxpayers' arguments in full. The following is a short summary of the Taxpayers' arguments as to why the assessment is excessive:

- 1) when equalized it exceeded the value based on sales of other properties;
- 2) the properties in this subdivision were overassessed compared to other assessments in the Town;
- 3) the B+ building grade was excessive and should have been B-;

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- 4) the assessment should not have been increased based on the "C&D factor" (the construction and design factor) because the Property's construction and design are standard;
- 5) the assessments were set using sales that occurred during the rising market while the market has deteriorated as shown by other sales near the assessment date; and
- 6) the Property was bought for \$145,300 in July 1991 and was not an exceptional buy.

The Town submitted a brief that presented the Town's arguments in full. The following is a short summary of some of the arguments:

- 1) a 1992 assessment-to-sales ratio study, conducted by the Town and based on sales in the Property's subdivision, demonstrated the assessments in the subdivision were consistent with the general level of assessment in the Town as calculated by the department of revenue administration;
- 2) a 1993 assessment-to-sales ratio study, conducted by the Town and based on sales in the Property's subdivision, demonstrated the values in the subdivision had stabilized whereas values generally in the Town were still declining;
- 3) all but one of the 58 houses in the subdivision were graded B+ with the 1.10 C&D factor to recognize the market and the style and design of the houses;
- 4) the Taxpayers' analysis was flawed because it relied on sales that were not reflective of market value (bank sales, inferior homes in another subdivision,

exceptionally priced sales compared to other sales more consistent with  
apparent market value), and it used the wrong equalization ratio in some  
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cases; and

5) the July 1990 purchase for \$145,300 was an exceptional buy when compared to  
the 10 Seasons Lane sale (340 square feet smaller, one less bedroom and less  
a half bath) for \$170,000 in January 1992.

#### **Board's Rulings**

Based on the evidence, we find the Taxpayers failed to show  
overassessment.

The board focused its analysis of the evidence in two ways:

1) a general review of the market evidence to determine if the  
Taxpayers' subdivision was assessed at a higher level than the balance of the  
Town; and

2) a review of each specific property to determine if it was  
disproportionately assessed.

#### **General Review**

Because the basis of all assessments is market value (RSA 75:1), the  
board analyzed the various sales within the same subdivision submitted by both  
the Town and the taxpayers. The taxpayers submitted five sales of properties  
in the same development (generally the lower-priced transactions) to support  
their claim of overassessment. The Town submitted fourteen sales of  
properties in the same development--seven sales that occurred in 1992 and  
seven sales in 1993. The parties also submitted several other sales of  
properties in a different subdivision; however the board relied on the sales

within the Taxpayers' subdivision because: 1) there was an adequate number of sales; and 2) those sales were the most comparable due to the similar location.

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While ideally sales occurring during the tax year would be given most weight, the board has included in its analysis all market-value sales that occurred in 1992 and 1993. This was done because it enlarges the sample of sales with which to perform the analysis and because the market remained relatively stable in this subdivision from 1992 to 1993.<sup>1</sup> The board also did not include any sales where evidence indicated the seller was possibly either under some duress to sell or was otherwise abnormally motivated. Examples of such sales are 11 Snowflake Lane and 37 Seasons Lane. 11 Snowflake Lane was not considered a market-value transaction because: 1) the grantee purchased the property from the builder and was able to obtain a mortgage for the full consideration; and 2) a similar but smaller house at 7 Seasons Lane sold eight months later for 26% more. The sale of 37 Seasons Lane was not considered because it was a sale by a bank five months after title was acquired by foreclosure. Banks are generally more motivated to liquidate their foreclosure portfolio than to hold and manage property.

Therefore from all the sales submitted by the parties, the board analyzed thirteen sales which are included in Appendix A.

After reviewing the descriptions of the properties and the property-

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<sup>1</sup> The median assessment to sales ratio of the seven 1992 sales submitted by the Town was 67%, while the median ratio for the seven 1993 sales was 65%.

record cards, the board determined that, notwithstanding some minor variations between properties such as decks, garages, etc., the sales could be analyzed using a common unit of comparison--the size of gross living area. (That analysis is contained in the array and chart in Appendix A.) As can be seen

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from the analysis, there is a direct relationship between size and price paid per-square-foot. Generally, the larger the gross living area the less paid per-square-foot and vice versa. This analysis will be helpful in reviewing both the general assessments in the neighborhood and the individual assessments. The board also stratified the sales into three groups based on the amount of square footage and arrived at an average price per-square-foot for houses within those three ranges of living area.

The board then performed similar analysis of the equalized assessed value and the square footage of living area for the appealed properties (Appendix B). Again, with some minor variations, there is a direct relationship between the assessments and the size of the houses. The appealed properties were similarly stratified by size and an average assessed value per-square-foot was determined.

In a general review of the Taxpayers' arguments, the board finds that the appealed properties were not as a class overassessed compared to other property in Town. Analysis of the thirteen sales indicates a median assessment-to-sales ratio of .67 (see Appendix C). As stated earlier, the sales in this sample occurred both in 1992 and 1993. The department of revenue administration determined that the town-wide assessment-to-sales

ratios for those two years were 66% and 70% respectively. Thus, in a general fashion the properties within this neighborhood were assessed at the same level of assessment as the rest of the Town.

Another check on the general assessment is to compare the sales prices per-square-foot for the three size strata with the average equalized assessments per-square-foot of the same size strata. For properties under

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1,800 square-feet, the sales indicate a square-foot price of \$100.06 compared to the equalized assessments of \$94.89 per-square-foot. The mid-size houses (1,800 square feet to 2,200 square feet) have a sales price per-square-foot of \$85.68 compared to an equalized assessment of \$88.84 per-square-foot. And lastly, the over 2,200 square foot houses have a sales per-square-foot price of \$68.86 compared to an equalized assessment of \$78.55 per-square-foot. Except for the larger category (over 2,200 square feet), the average assessments are similar to the indicated price per-square-foot by the sales. In the last category the difference amounts to approximately 14% and raises a question with the larger houses that the board will address in the property specific analysis that follows.

#### **Specific Property Review**

The three sales of houses greater than 2200 square feet (See Appendix A) show a lower price per square foot than the replacement cost used by the Town in the assessments. (See Appendix B.) The board has observed this phenomenon on several occasions where the properties in a development are very similar except for size. Often the sales, as in this case, show the

smaller units selling for more than indicated by the replacement cost method and vice versa. It appears that the market approach is defining a value range for similar properties in a tighter range than the cost approach indicates. To recognize this market phenomenon, the board has reviewed the Property relative to all 13 sales and has determined the Property is reasonably assessed.

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While this calculation may show 10% overassessment, the board does not so conclude based on: 1) our review of the Property; and 2) the fact that the Appendix A analysis for larger homes was based on only three sales that indicated a 22% range in sale prices per square foot.

The board finds the Taxpayers' purchase price, when compared to the other sales, demonstrates the sale was low. The following two sales make the point:

22 Seasons sold 9/92 \$164,000 (428 square feet smaller); and

20 Seasons sold 8/93 \$145,000 (884 square feet smaller).

Additionally, if the Taxpayers' sale is inserted in the Appendix A analysis, the sale is significantly out of line with other sales.

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A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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, Member

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Gerhardt Schroeder and Rosalie Nucerino, Taxpayers; and Chairman, Board of Selectmen.

Dated: July 20, 1995

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Melanie J. Ekstrom, Deputy Clerk

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**Gerhardt Schroeder and Rosalie Nucerino**

**v.**

**Town of Londonderry**

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**ORDER**

This order relates to the Taxpayers' August 18, 1995 motion for rehearing of the board's July 20, 1995 decision (decision). The board denies the Taxpayers' request and responds to the issues raised in the Taxpayers' paragraphs 1 through 3.

Paragraph #1. The board never concluded the purchase price by the Taxpayers was not an arm's length transaction. The board simply concluded that when looking at many sales presented as evidence, the Taxpayers' purchase price was an outlier from the general pattern the other sales indicated.

The board did not make a direct comparison to the 10 Seasons Lane property. One of the Town's arguments was a direct comparison to the 10 Seasons Lane. However the board was aware from the deliberation of the various appeals from this subdivision that 10 Seasons Lane was the model home and alone would not be a good comparable without some adjustment.

Paragraph #2. The board agrees with the Taxpayers that the term "leased square line" was inappropriate on appendix A because the X axis was not of equal increment. However revising the data on a graph with both the X

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and Y axes being of linear increment provides the same moderate negative correlation that appendix A and appendix B indicate.

As the board's decision indicated, its analysis was broken down in two areas: 1) a general review; and 2) a property specific review. The analysis of the 13 sales was used primarily in the general review section. The board disagrees with the Taxpayers' assertions that the larger square-footage houses do not show a lower price-per-square-foot by sales and vice versa. This general relationship can be seen in the array of sales from the smaller square-footage houses to the larger square-footage in appendix A and the three average size models drawn from those sales.

Paragraph #3. The board's comparison on page 7 to two smaller homes was done simply to show that one sale does not necessarily dictate a market

but rather all comparable sales should be considered in the determination of market value. Just as one brush stroke does not create an impressionist painting, one sale does not necessarily dictate market value. The composite image of several sales paints a clear picture.

Further, the board concluded that, if it did adjust the Taxpayers' assessment 10% lower, it would create greater disproportionality by having the Taxpayers' 2,264 square-foot house assessed less than many smaller square-footage properties under appeal.

While reviewing the Taxpayers' reconsideration motion and the decision, the board determined the graph on page 7 of the decision was actually the assessments comparison graph in appendix B rather than the sales comparison graph of appendix A. The board regrets this error. However if the Taxpayers' sale price was properly inserted on appendix A, it would still show  
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the sale was slightly below the average indicated sale price of the three larger sales analyzed.

This perhaps highlights the difficulty and the crux of the problem the board faced in reviewing the 18 appeals of this subdivision including the Taxpayers'. The board attempted to determine a consistent indication of market value from sales that were not always consistent. However the general pattern that those sales indicated caused the board to conclude that the Taxpayers' Property was assessed within a reasonable range of the equalized market value and therefore no abatement was ordered. The marketplace is not a perfect world, and it is often difficult to obtain a definitive estimate of market value. However the board concludes that the assessment is reasonable based on all the market evidence presented by the parties.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Gerhardt Schroeder and Rosalie Nucerino, Taxpayers; and Chairman, Board of Selectmen.

Date: September 25, 1995

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Valerie B. Lanigan, Clerk

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