Richard and Deborah Schillbach

v.

Town of Londonderry

Docket No.: 13222-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $104,600 on a single-family home 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-;

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 early in 1992 for $176,000.

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 cases; and

5) the Property sold in early 1992 for $176,000, which if equalized by the .66 1992 ratio indicates the Property, if anything, is underassessed.

Board's Rulings

Based on the evidence, the board finds 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.

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.[1] 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-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

[1] 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%.

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 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 Taxpayers' Property contained 1872 square feet of gross living area and its equalized assessment indicates a market value of $158,484 ($104,600 ÷ .66). (See Appendix B.) Sales for properties of this square footage group indicated a market value of $160,393 for the Property (1872 square feet x $85.68). Based on this analysis the board finds that the Property is not overassessed.

Assessments must be based on market value, see RSA 75:1, and must be proportional to the general level of assessment in the municipality. Here the 1992 level of assessment was 66% as determined by the department of revenue's

equalization ratio. Thus, the Property's equalized assessment was $158,484 ($104,600 assessment ÷ .66 equalization ratio). This equalized assessment should provide an approximation of market value. Another way to look at this would be to reduce a market value estimate by the ratio. The Property sold in January, 1992 for $176,000. See Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988) (arm's-length sale is one of the "best indicator's of the property's value)." The 1993 sale ($176,000) exceeds the 1992 equalized

assessment ($158,484). Alternatively, we could compare the $104,600 assessment to the sales price reduced by the 66% ratio -- $104,600 versus $116,160.

All of the above demonstrates no over assessment.

The board must comment on the Taxpayers' frivolous appeal. The Taxpayers purchased the Property in January 1992 for a price higher than the equalized assessment. Yet, the appeal was filed June 1993 (after the January 1992 sale). The brief was filed July 1994 (after the January 1992 sale) and while it listed the sale, the Taxpayers argued the Property should be decreased by 30% and had a market value of $114,100.

Based on the above, we do not understand why this appeal was filed.

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

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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 Richard and Deborah Schillbach, Taxpayers; and Chairman, Board of Selectmen.

Dated: July 20, 1995

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Melanie J. Ekstrom, Deputy Clerk

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