

John E. Fugaros

v.

Town of Londonderry

Docket No.: 13336-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$98,800 on a single-family home with lot (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden.

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

- 1) the properties in this subdivision were overassessed compared to other assessments in the Town;
- 2) 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;

- 3) the Property was worth \$146,000 based on a realtor's report; and
- 4) the new assessment being done will show overassessment.

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 Taxpayer's 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 is very similar to 7 Seasons Lane which sold November 1992 for \$144,900; the sale of 7 Seasons Lane indicates an assessment to sales ratio of 67% ($\$97,400 \div \$144,900$) which compares favorably to the Town wide ratio of

66%.

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Board's Rulings

Based on the evidence, the board finds the Taxpayer 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 Taxpayer's 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

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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 from the analysis, there is a direct relationship between size and price paid

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%.

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 Page 5
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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 Taxpayer's 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

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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 Taxpayer's Property contained 1630 square feet of gross living area and its equalized assessment indicates a market value of \$149,697 ($\$98,800 \div .66$). (See Appendix B.) Sales for properties of this square footage group indicated a market value of \$163,098 for the Property (1630 square feet x \$100.06). Based on this analysis the board finds the Property is not overassessed.

Further, the board finds the Taxpayer estimated a market value of \$146,000 - very similar to the Town's equalized assessment of \$149,697.

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

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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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been
mailed this date, postage prepaid, to John E. Fujaros, Taxpayer; and Chairman,
Board of Selectmen.

Dated: July 20, 1995

Melanie J. Ekstrom, Deputy Clerk