

Jonathan and Valerie Sobel

v.

Town of Durham

Docket No.: 15369-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$563,800 (land \$190,900; buildings \$372,900) on an 8.73-acre lot with a house (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the assessment included a dock, which was destroyed in a 1993 storm;
- (2) the Town incorrectly assessed the house as 1¼ stories when it is 1¼ stories;

(3) the Town erroneously calculated the home's effective square footage by not recognizing the dormered areas and gabled roofs;

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(4) the Town assessed the Property with central air when there is none;

(5) the Property was purchased in November 1994 for \$627,000 and included \$75,000 for furnishings;

(6) a comparable property sold in February 1996 for \$385,000 and was assessed \$449,200 and a vacant lot sold in October 1992 for \$140,000;

(7) the Town's improved comparable is not comparable because it is in a private location with manicured lawns; and

(8) the correct assessment should be \$490,583.

The Town argued the assessment was proper because:

(1) the Town consistently measured square footage based on exterior measurements;

(2) a vacant lot sold in March 1993 for \$225,048, which supported the Property's land value;

(3) an inferior property with less square footage and less acreage sold for \$670,000 in October 1994, which supported the Property's assessment; and

(4) the Taxpayers failed to substantiate the \$75,000 figure for "furnishings" in their purchase price.

The board's inspector inspected the Property, reviewed the assessment-record card, reviewed the parties' briefs, and filed a report with the board. The board mailed the inspector's report to the parties, and the parties were given time to respond to the report. This report concluded the proper assessment should be \$537,100. The inspector sketched the floor plans for each

floor and calculated the building area, using exterior measurements. The inspector graded the overall quality of the building as grade 7 (excellent plus 10%), and then applied depreciations to address the curable problems (poor workmanship and quality) and the incurable problems (cracks in the foundation).

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Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. The Taxpayers responded to the inspector's report, stating his effective area measurements were inaccurate based on the actual blueprint provided by the architect. Additionally, the Taxpayers disputed the inspector's increase to \$64.09 per-square foot of the replacement cost calculation, stating other excellent-grade homes were \$59.00 per-square foot.

The Town recommended using the inspector's adjusted assessment, stating the Taxpayers' concerns were adequately addressed in the report. Further, the Town stated the inspector's building grade of excellent +10 was consistent with comparable homes in the area.

BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayers did not show overassessment.

Under RSA 75:1, assessments must be based on market value. Therefore, a property's market value is a key issue in most tax appeals. The Taxpayers did not present any credible evidence concerning the Property's fair market value.

For example, the Taxpayers did not provide an appraisal or other market analysis of the Property's value. To carry their burden, the Taxpayers should

have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

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The Taxpayers focused on the calculation of the assessment to show why they concluded the Property was overassessed based on the Taxpayers' view of how the assessment should have been calculated. They also pointed out errors on the assessment-record card. This attempt, however, lacked a tether to the market. Thus, without market basis, the board was unable to conclude that the Taxpayers' assessment calculations reflected relative market value. Specifically, the Taxpayers complained about certain asserted errors in the assessment. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

The Taxpayers attempted to distance themselves from an important piece of market information -- their own purchase of the Property for \$627,000 in November 1994. One sale does not necessarily demonstrate a property's market value. It can be, however, probative evidence of a property's worth because the various factors that enter into valuing and assessing a property, e.g. size, condition, quality of construction, location, have already been considered by the buyer and seller. Moreover, where it is demonstrated that a sale was an arm's-length sale, the sales price is one of the "best indicators

of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). The evidence indicated that this sale was an arm's-length sale. The Town stated the seller was motivated to sell, which would normally indicate a below-market purchase price.

While the Taxpayers attempted to distance themselves from the purchase price, they did not submit any market information to show that the purchase price was excessive. For example, the Taxpayers did not mention whether they had the

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Property appraised during the purchase. Most purchases include an appraisal. We must assume that either no appraisal was done during the purchase or that an appraisal was done that provided a value estimate in excess of the Taxpayers' assertions in this appeal. This assumption is not the basis of the board's decision but is cumulative support for the denial.

The Taxpayers argued the purchase price was excessive because personalty was included with the sale and because of certain asserted defects in the Property. Concerning the personalty: a) the Taxpayers did not provide any documentation about the personalty's description or value; b) the Taxpayers apparently refused to provide such a list to the Town; c) the Taxpayers' realtor had this information, but after receiving a call from the Taxpayers, told the Town not to release this information to the board; d) the Taxpayers made inconsistent statements concerning the value of the personalty -- \$75,000 in the brief to this board but apparently reported \$170,000 to the revenue administration; and e) the tax stamps, which are paid only on realty, were based on the full \$627,000. Taken together, the board can give little to no

weight to the assertion that the purchase price included substantial personalty. Quite frankly, the Taxpayers failure to provide the information on their own and their actions to prevent the realtor from releasing the information brought into question the Taxpayers' credibility on this issue and on their overall assertion of overassessment.

The board also finds that based on the evidence, including the sales submitted by the Town, that the equalized assessment was not excessive for this type of property. The Town's sales show that at least there was some market information supporting the equalized value. The Taxpayers' comparables sales were submitted only in rebuttal to the Town's information. The Taxpayers did

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not perform an adequate analysis of those properties for comparability to the Property such as making market-derived adjustments for different factors, e.g. size, quality and location.

Finally, the board does not accept the inspector's recommendation. As stated earlier, the board is not bound by this report; it is simply additional evidence for the board to consider. The board does not accept the report for two reasons. First, the inspector did not perform any market analysis. Rather, he performed a limited assessment analysis. This report was consistent with the board's instructions to Mr. Bartlett. Mr. Bartlett was not instructed, nor does he have the time, to perform an appraisal for a taxpayer.

This was the Taxpayers' burden. Second, the other arguments and evidence before the board did not demonstrate overassessment, and Mr. Bartlett's report would have lowered the assessment.

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

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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, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jonathan and Valerie Sobel, Taxpayers; and Chairman, Selectmen of Durham.

Date: July 8, 1996

Valerie B. Lanigan, Clerk

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ORDER

This order responds to various motions and correspondence filed with this board by the "Taxpayer" and the "Town" relating specifically to RSA 74:17 (attached). The material submitted is too extensive to reiterate here. However, after a thorough review of the material and with the desire of ending the conflict between the parties, the board, on its own motion, orders the following.

1. The Taxpayer's November 9, 1995 motion for protection is granted. The Town shall not obtain an administrative inspection warrant to inspect the "Property." (This may be moot as the Town subsequently stated it would not seek an administrative inspection warrant.)

2. The board denies any motion by the Town to dismiss the Taxpayers' appeal for failure to inspect the Property.

3. The board orders its review appraiser, Mr. Scott Bartlett, to contact the Taxpayers to make an appointment to perform an exterior and interior inspection of the Property. Mr. Bartlett shall submit a report of his

findings, which will be made available to the parties to respond to.

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4. The board orders a hearing be scheduled on this appeal rather than the expedited procedure previously elected by the parties. The board finds the interests of the parties will be best served by holding an oral hearing. Therefore, the Town's November 9, 1995 request for an extension to file its brief is now moot.

The board reminds the parties that any and all correspondence submitted to this board by either party must also be copied to the opposing party pursuant to board rule TAX 201.14.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Jonathan and Valerie Sobel, Taxpayers; and Chairman, Selectmen of Durham.

Dated: January 31, 1996

Valerie B. Lanigan, Clerk