

Ricky and Jacqueline Fermoye

v.

Town of Londonderry

Docket No.: 18319-99PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of \$98,000 (land \$30,000; buildings \$68,000) on a .95-acre lot with a residential condominium (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property's assessment was increased in 1998 and 1999 while some other properties in the Town were not;

(2) the three comparables submitted by the Town to show the Property was correctly assessed

are unfair and should not be “admitted” because they were not used to establish the April 1, 1999 assessment; and

(3) even if the comparables are used, differences in access, view and other improvements should result in a lower value for the Property.

The Town argued the assessment was proper because:

(1) at least three comparable sales indicate a market value higher than the equalized value for the Property ($\$98,000 \div 0.90 = \$108,900$);

(2) the Town annually reviews and updates its assessed values based upon a review of market data, including sales;

(3) in the last several years, residential properties have appreciated at a rate of approximately 12% per year; and

(4) the Taxpayers failed to satisfy their burden of proving disproportionality.

Board's Rulings

Based on a review of the evidence, the board finds the Taxpayers failed to carry the burden to show they were disproportionately assessed.

The parties agreed the 1999 equalization ratio for the Town was .90, as determined by the department of revenue administration (“DRA”).

The Taxpayers raised arguments about the Town’s methodology of revising assessments on an annual basis as it was applied to their Property, while not adjusting other assessments. Based on the Town’s description of its assessment procedures, the board finds the Town’s process of annually reviewing all assessments relative to market data and making adjustments to those types of properties that have changed in value from the previous year is exactly what the

constitution and statutes require to maintain assessment equity. See, generally, *Sirrell v. State of New Hampshire*, No. 2001-003, __N.H.__, <http://www.state.nh.us/courts/supreme/opinions/0105/sirre087.htm> (May 3, 2001).¹ Following the *Sirrell* decision, the legislature revised several key provisions in the statute (RSA Chapter 75) to emphasize and establish additional procedures for enforcing the requirement that municipalities annually review and adjust assessments to reflect

¹ “The legislature has enacted a property tax assessment process that we believe, if complied with, would satisfy and, even exceed[,] Part II, Article 6's requirements. The legislature continues to require that taxable property be assessed ‘at its true and full value in money.’ RSA 75:1 (1991). Since at least 1876, the General Court [legislature] has required local assessors and selectmen annually to examine all the real estate in their respective cities and towns and to reappraise any real estate that has changed in value since the last appraisal. See RSA 75:8 (1991); *Hill v. Marvin*, 98 N.H. 519, 522-23 (1954) . . . This system provides a reasonable process for determining the market value of property within each municipality every year.” __ N.H. at __.

changes in “market value”²; but Sirrell and other case authorities make clear that this obligation preceded the new legislation.³ In short, the board finds the Town’s assessment methodology

complies with the existing constitutional statutory requirements and puts the Town in a good position to comply with the expanded requirements contained in new legislation passed this year.

The Town submitted three sales to support its assessment of \$98,000 which, when equalized, provide an indicated market value of \$108,900 ($\$98,000 \div .90$). The Taxpayers noted that two of the three sales occurred subsequent to the April 1, 1999 assessment date, and that there was some differences between the properties, such as attic finish and quality of pond access. Although two of three sales occurred subsequent to the assessment date, the board finds

² See Chapter 158, adopted at the 2001 legislative session, and particularly Sections 51 and 53, which reenacted RSA 75:1 and 75:8, respectively.

³ For example, in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), the court noted: “we are convinced that the ideal of fair and proportionate taxation can be approached only through a constant process of correction and adjustment of assessments. RSA 75:8, indeed, requires selectmen and assessors to engage in just such continual revision by examining appraisals for error each year. This candid statutory recognition of the need for constant corrective effort is antithetical to any legal doctrine that would invest a given valuation of property with preclusive effect for the future . . .”

such sales can be used to establish market value as of April 1, 1999, as long as adequate time adjustments are made, either up or down, for an appreciating or a declining market. While the Town did not have those two sales to set the assessment, on appeal either party has the benefit of subsequent sales to assist them in their respective positions, provided, of course, reasonable time adjustments are made to the sales.

In assessment appeals, it is an accepted practice to utilize sales data of comparable properties, even if these sales occurred after the assessment date.⁴ The board routinely considers such evidence, making appropriate adjustments for changes in market conditions over time, and cannot sustain an objection to such evidence on the grounds of admissibility. The board also notes the 1999 equalization ratio of 0.90, which was accepted by both parties, is determined by the DRA based on sales occurring both before and after (October 1, 1998 to September 30, 1999) the property tax assessment date (April 1, 1999). Thus, it is not unreasonable for the Town to defend its determination of assessed value by citing, subject to appropriate adjustments, available sales data for comparable properties, whether these sales occurred before or after the assessment

⁴ See, generally, International Association of Assessing Officers, Property Appraisal and Assessment Administration (1990) at p. 562 -63 (“The sales comparison approach has traditionally provided the main defense of appraised values in assessment appeals. If suitable comparables can be identified (or if the property itself has sold), and their sales prices support the assessor’s value, there is no better defense The sales prices of the comparables are . . . adjusted to account for differences.” Cf. Poorvu v. City of Nashua, 118 N.H. 632, 633 (1978) (permitting use of comparable sales information for five other properties because “the sales prices of the five other apartment complexes (are) evidence of the true market value of those properties . . . (because) (t)he price paid by the owner is one of the best indicators of that property’s value . . . (and) sales price is admissible as independent evidence and not merely as support for expert testimony Therefore, unless it is found on evidence that the sale was not consummated in a fair market, the sale price of property stands as evidence of its value.” [Citations omitted.]

date.

The Town testified that residential sales appreciated during this time frame at approximately 12% per year. The board has made adjustments in the following analysis of the Town's three comparables to account for this. Further, the board has made adjustments on Comparable #1 for the improvement (attic finish) that was present, but not assessed by the Town, and for its better access and view of the pond. The board, based on the testimony, believes this is a factor the market would likely recognize and, therefore, has estimated an appropriate adjustment. The other adjustments made for basement finish and pools were derived from the assessment-record cards and equalized by the Town's 1999 equalization ratio of .90. All calculations are rounded to the nearest \$50.

Comparable #1

Sale Date	September 30, 1998
Sale Price	\$109,000
Time Adjustment	\$115,550 (\$109,000 x 1.06)
Less Estimated Attic Finish	
Contribution Value	\$ 2,000
Less Estimated More Desirable	
Pond Access/View	<u>\$ 5,000</u>
Indicated Market Value	\$108,550

Comparable #2

Sale Date	October 30, 2000
Sale Price	\$145,000

Time Adjustment	\$121,850 (\$145,000 ÷ 1.19)
Less Equalized Pool Value	\$ 1,350
Less Equalized Finished	
Basement Value	<u>\$ 5,300</u>
Indicated Market Value	\$115,200

Comparable #3

Sale Date	October 8, 1999
Sale Price	\$121,400
Time Adjustment	\$114,550 (\$121,400 ÷ 1.06)
Less Equalized Pool Value	\$ 1,800
Less Equalized Basement	
Finish Value	<u>\$ 2,950</u>
Indicated Market Value	\$109,800

These three sales provide an indicated market value range of \$108,550 to \$115,200. The Taxpayers' indicated equalized market value of \$108,900, as calculated earlier, is well supported by these three sales within the Taxpayers' neighborhood. Therefore, the board finds the assessment is proportional and the appeal must be 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(e). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Ricky and Jacqueline Fermoyle, Taxpayers; and Karen Marchant, assessor, Town of Londonderry.

Date: September 4, 2001

Lisa M. Moquin, Clerk

Ricky and Jacqueline Fermoyle

v.

Town of Londonderry

Docket No.: 18319-99PT

ORDER DENYING REHEARING MOTION

The board has reviewed the “Rehearing Motion” filed by the “Taxpayers” on October 2, 2001 in response to the board’s September 4, 2001 Decision, as well as the “Objection to Motion for Rehearing” filed by the “Town.” For the reasons stated, the Rehearing Motion is denied.

Consideration of the Rehearing Motion is governed by TAX 201.37. Such motions “shall only be granted for ‘good reason’ pursuant to RSA 541:3, and a showing shall be required that the [b]oard overlooked or misapprehended the facts or the law and such error affected the [b]oard’s decision.” TAX 201.37(d). See also TAX 201.37(f).⁵ The Rehearing Motion fails to

⁵ **“Additional Facts or New Arguments.** Parties shall submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available to the moving Party

satisfy these threshold requirements.

Six captioned issues are presented by the Taxpayers in requesting a rehearing, but issues titled "SECOND" through "SIXTH" in the Rehearing Motion are essentially the same issues presented at the August 16, 2001 hearing by the Taxpayers. A comparison of Taxpayer Exhibit 1 submitted at the hearing with the Rehearing Motion reveals these issues have already been presented and considered by the board. The Taxpayers have made no showing the board 'overlooked or misapprehended the facts or the law,' as required by TAX 201.37(d).

but not presented at the original hearing or to consider new arguments that could have been raised at the hearing. . ."

In this regard, the so-called “THIRD” issue is without merit because the assessment record card maintained by the Town for the “Property” acknowledges the “0.2” acres and gives it a very nominal value as “Excess” acreage (\$600).⁶ During deliberations, the board noted the nominal value for the “0.2” acres was reasonable given the limited utility of the eastern portion of the lot due to its “dog leg” configuration and the presence of the utility easement. Consequently, the de minimis nature of this item (less than one percent of the total assessment in 1999) made it unnecessary to mention this point specifically in the Decision.

As to the “FIRST” issue, the burden of proof rested with the Taxpayers, Decision at p. 1, to prove “disproportionality” *before* the hearing was closed on August 16, 2001. After full deliberations on the evidence presented, including the three comparable sales presented by the Town (in contrast to none presented by the Taxpayers), the board concluded the Taxpayers failed to meet this burden. While the Taxpayers may still disagree with this conclusion, their recourse is an appeal to the supreme court.

The Taxpayers confuse their right to a proportional assessment based on the market value of the Property with concerns about their tax burden (“actual cash tax payments”) and how it has apparently increased (“7.85%” per year) over the three-year period from 1999 to 2001. As a preliminary matter, the board notes the current appeal must focus on the tax year 1999, making comparisons to subsequent years improper in this context. Moreover, the tax burden is a product

⁶ The Taxpayers offered no proof the utility easement to New England Telephone & Telegraph Company (shown on the site plan attached to Taxpayer Exhibit 1) reduced the value of this “0.20” acres to zero.

of the assessed value of the Property and the Town's tax rate. See, generally, International Association of Assessing Officers, Property Appraisal and Assessment Administration 14-16 (1990). If the assessed value and/or the Town's tax rate increases, or if one increases and the other is not reduced, the tax burden would increase, but this is not proof of a disproportional assessment. The evidence presented, including the Town's three comparable sales and the agreed equalization ratio of 0.90 in 1999, see Decision at p. 6, leads to the contrary conclusion that the assessed value of the Property was proportional to the general level of assessments in the Town for the 1999 tax year under appeal. The Taxpayers neglect to consider how an indicated appreciation in market values can result in increased assessments.

For these reasons, the Motion is denied. Any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of this Order, pursuant to RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Ricky and Jacqueline Fermoyle, Taxpayers; and Karen Marchant, assessor, Town of Londonderry.

Date: October 17, 2001

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Lisa M. Moquin, Clerk