Henry J. and Janet L. Ciofrone

v.

Town of Hollis

Docket No.: 19732-02PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2002 assessment of $424,200 (land $157,700; buildings $266,500) on a two-acre lot with a single-family home (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, 138 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 dwelling is nearly identical to the dwelling at 40 Forest View Drive although the two assessments are widely disparate;

(2) the dwelling at 40 Forest View Drive is two feet narrower at the family room/garage section;

(3) the Taxpayers tried unsuccessfully to purchase the 40 Forest View Drive property; and

(4) any difference between the assessments of the Property and the 40 Forest View Drive property should be in the land portion of the assessments, adjusted for location if necessary, as the structures are very similar.

The Town argued the assessment was proper because:

(1) an analysis using four comparable sales supports the assessment;

(2) the Property is assessed within a reasonable range of the sale comparables; and

(3) there apparently is an error resulting in the underassessment of the 40 Forest View Drive property and that assessment will be reviewed and corrected, as necessary, during the Town's annual rolling review.

After the hearing, the board directed one of its RSA 71-B:14 review appraisers to review the file, inspect the Property and file a report ("Report"). 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 review appraiser's recommendations. The parties were sent a copy of the Report and given an opportunity to review and comment on it. Neither party filed comments.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionally assessed.

The Taxpayers base their appeal primarily on a comparison of the Property to the property located at 40 Forest View Drive in the Town. The Taxpayers' dwelling and the home at 40 Forest View Drive were built by the same builder and are nearly identical save a very small modification resulting in a 52 square foot difference in living area between the two, very similar dwellings. The Taxpayers contend both homes were built using the identical standards, materials

and specifications and that, other than the slight variation in size, there should be no difference between the assessments of the two dwellings. The Taxpayers further testified that any differences in the total assessed values of the properties that may be appropriate would be due solely to their locations as their structures are nearly identical.

In support of the assessment, the Town performed an analysis utilizing four sales of comparable properties. The analysis indicated the market value of the Property was $424,200 on April 1, 2002. Further, the Town testified that subsequent to the abatement request, the assessors reviewed the Property's assessment as well as the assessment of the 40 Forest View Drive property. Based on its review and analysis, the Town found the Property is not overassessed but there was some evidence the 40 Forest View Drive property may be under assessed. However, the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). Attached to the Taxpayers' March 15, 2005 letter to the board was a copy of what appeared to be the minutes from the board of selectmen's June 9, 2003 meeting in which several abatement requests were discussed, including that of the Taxpayers. In the minutes its states: "Marino stated the assessment of the Arbor Lane property had been done correctly and the property at 40 Forest View was underassessed. He recommended denying the abatement by Ciofrone and requesting a re-inspection of the property at 40 Forest View." This is an indication the Town recognized the fact the properties, while having homes of very similar size and construction, had widely disparate assessments and that corrective action to rectify the underassessment of the 40 Forest View Drive property would occur during the rolling reinspection planned by the Town.

The Report indicated the Property's market value was $440,000 on April 1, 2002. The Report utilized the cost approach and the sales comparison approach placing primary emphasis

on the estimate of value derived by the sales comparison approach. One of the Town's comparable sales was also utilized in the Report. The board finds the Report to be the best evidence of the Property's market value on April 1, 2002. The Report used five sales in the sales comparison approach, four of which were different from the Town's, and, in the Report's reconciliation, placed the most emphasis on the value indication estimated by that approach. The board finds the review appraiser's estimate of value to be well supported and has given it the most weight.

Given the review appraiser's estimate of value and the Town's median level of assessment ratio of 98% for tax year 2002 , the board finds the Taxpayers are proportionally assessed relative to the Property's market value.

For these reasons, the board denies the Taxpayers' appeal.

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, <u>not the date this decision is received</u>. 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(f). 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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Henry and Janet Ciofrone, 63 Arbor Lane, Hollis, New Hampshire 03049, Taxpayers; and Chairman, Board of Selectmen, Town of Hollis, 7 Monument Square Hollis, New Hampshire 03049.

Date: July 20, 2005

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Anne M. Stelmach, Clerk