

Kevin G. and Claudine B. Curran

v.

Town of Hollis

Docket No.: 19808-02PT and 20445-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 and 2003 assessments of: 1) \$1,805,200 (land \$209,200; buildings \$1,596,000) on Map 004, Lot 008, a 9.49-acre lot with a single-family home (“73 Blood Road Property”); and 2) \$417,463 (land \$188,763; buildings \$228,700) on Map 008, Lot 061, a 120-acre lot with 116.7 acres assessed in current use and 3.3 acres assessed not in current use with a vacant dwelling and numerous farm buildings (“Bell Lane Property”). For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties’ assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

73 Blood Lane Property

The Taxpayers argued the 73 Blood Lane Property assessment was excessive because:

- (1) the site has only 200 feet of road frontage and is not subdividable;
- (2) an appraisal (“Minuteman Appraisal”) estimated the 73 Blood Lane Property’s market value at \$1,100,000 as of June 25, 2002, which, when multiplied by the 2002 median level of assessment for the Town of 0.98, would yield an assessment of approximately \$1,073,600;
- (3) the Taxpayers’ agent (David Irwin) performed an analysis (“Irwin Analysis”) which indicated a market value for the 73 Blood Lane Property of approximately \$1,250,000;
- (4) the Town’s use of some Bedford, New Hampshire comparable sales results in an opinion of value that is “extremely dubious” due to an unquantified, but likely significant, locational difference between Bedford and Hollis; and
- (5) the 73 Blood Lane Property, while of very good quality, is inferior to the sale of 43 Powers Road (“Bousquet Property”) which sold in October 2003 for \$1,750,000.

The Town argued the 73 Blood Lane Property assessment was proper because:

- (1) an assessment analysis (“Municipality Exhibit A”) performed by Michael Hurley of Vision Appraisal Technology, the Town’s 2002 reassessment contract firm estimated the property’s market value at \$1,864,100;
- (2) a comparison with several other dwellings over 7,500 square feet of living area indicates the property is comparably assessed; and
- (3) the property appears to be of similar quality as the Bousquet Property based on an exterior view of the Bousquet Property and the photographs of it submitted by the Taxpayers.

Bell Lane Property

The Taxpayers argued the Bell Lane Property assessment was excessive because:

- (1) the dwelling and farm buildings no longer contribute any value to the property having been vacant for a number of years with the attendant deferred maintenance and vandalism; and
- (2) the highest and best use of either the entire tract or the 3.3-acre area not in current use is for residential development and any purchaser would demolish the existing structures.

The Town recommended the Bell Lane Property assessment be reduced to \$349,494 and argued the reduced assessment was proper because:

- (1) it reflects an increase in the physical and functional obsolescence to account for the fact the dwelling has no running water or heat and has been subject to vandalism;
- (2) it further reflects an increase in depreciation on the farm buildings for their condition and utility; and
- (3) while the dwelling has been vacant for a number of years, some of the farm buildings have been used by the individual that leases the farm land for some animal, forage and equipment storage.

Board's Rulings

73 Blood Road Property

Based on the evidence submitted, the board finds the assessment for the two appeal years to be \$1,405,600 (land \$209,200; buildings \$1,196,400). This assessment is based on reducing the Town's assessment to recognize a lower dwelling grade than that designated by the Town and applying a 5% functional obsolescence factor to account for the indoor pool area not having interior finish to the extent the balance of the house does and to the extent the Town's replacement cost methodology calculates.

In general terms, the 73 Blood Lane Property is a large, excellent quality dwelling with many desirable amenities. The difficulty in appraising this property, as shown by the fairly divergent opinions submitted, is that there are few properties that are truly comparable, either in quality or size, that have sold enabling an appraiser to perform a comparable sales approach without significant and questionable adjustments. Thus, the value indications are not as definitive as those for a sales approach for a property with better comparables but is a more impressionistic indication of value. In the findings that follow, the board will detail and weigh, with the assistance of the photographs and descriptive testimony presented by the parties, the impressions of value indicated by revising the Town's assessment-record card, the Minuteman Appraisal and the Irwin Analysis. In short, however, the board concludes the Town's assessment, before adjustment, overstates the quality and value of the property, while the Minuteman Appraisal understates its quality and value. While the board's revised assessment is higher than the Irwin Analysis' conclusion, the Irwin Analysis, with some additional consideration for the grade and quality differences of the comparables utilized in it, is, of the three, the best estimate of the property's market value.

The board has reviewed the photographs and listings contained in the Town's assessment analysis and Minuteman Appraisal and concludes the 73 Blood Lane Property is inferior in quality to the Bousquet Property but superior in quality to the "McLaughlin Property" (Taxpayer Exhibit 5).¹ On the exterior, the 73 Blood Lane Property has very good quality architectural design with excellent fenestration and trim detail highlighting the brick veneer exterior. The photographs also show fairly extensive landscaping and brick wall improvements to the lot. The

¹ While the McLaughlin Property was not presented as a sale in the Irwin Analysis, it was another property Mr. Irwin represented on appeal to the board (Michael and Iris McLaughlin v. Town of Hollis, Docket No.: 19809-02PT) and whose record the board took official notice of in this appeal.

interior of the house has, based on testimony and photographs, an appealing two-story foyer area, good quality trim, hardwood floors, good quality bathroom and kitchen cabinets and fixtures and a number of unique and desirable amenities such as an indoor pool, sauna, multiple fireplaces, multiple baths, etc. The board agrees with Mr. Irwin, however, that the Bousquet Property contains a higher quality of interior finish, paneling and ceiling detail than the Taxpayers' property. On the other hand, the board finds the McLaughlin Property, while certainly of good quality, is inferior to the 73 Blood Lane Property, both in quality of materials (interior and exterior), detail of finish (again, interior and exterior), desirable amenities and yard and landscaping improvements.

The first impression of value is derived from reviewing the Bousquet Property's sale relative to its assessed value and then doing a relative assessment comparison between the Bousquet Property and the 73 Blood Lane Property. The Bousquet Property sold on October 31, 2003 for \$1,750,000. The Town's assessment-record card had a grade of "luxurious" and a composite "grade index factor" (combination of grade designation and building component points) of 2.81. By contrast, the Town had graded the 73 Blood Lane Property as "luxurious+10" and had a composite "grade index factor" of 3.17. In trying to determine whether the Town's grading was reasonable for either of the two properties, the board compared the Bousquet Property's sale price time trended (at the 7% annual rate presented by the Taxpayers and agreed to by the Town) back to the assessment date of April 1, 2002 with the Town's assessed value of the Bousquet Property of \$1,549,400 equalized by the 2002 stipulated ratio of 0.976. The time trended sale price calculation is: $\$1,750,000 \times .89$ (19 months \div 12 months \times 7% annual appreciation - 100%) = \$1,557,500. The equalized assessment calculation is: $\$1,549,400 \div .976 = \$1,587,500$. Comparing the time trended sale price with the equalized

indicated market value indicates that, based on this one sale, the Town's grading of the Bousquet Property as "luxurious" was reasonable. Therefore, based on the earlier finding that the Bousquet Property is superior to the 73 Blood Lane Property, the Town's grading of the 73 Blood Lane Property at luxurious+10 is excessive.

While the board does not have access to the Vision Appraisal Technology software to make the appropriate grade adjustment, based on a review of the Bousquet Property's and the 73 Blood Lane Property's assessment-record cards and the other assessment-record cards submitted as comparable sales, it has estimated a 2.50 composite grade index is appropriate to reflect the lesser quality of the improvements of the 73 Blood Lane Property. Further, the Town's replacement cost methodology arrives at an adjusted building base rate (after revisions of the grade factor to 2.50) of approximately \$117 per square foot. The 25' x 44' section that houses the indoor swimming pool, by its very nature, has interior walls with significantly less finish compared to the rest of the dwelling. The board finds it appropriate to recognize both that lack of a typical interior finish and the slight limitation on market value that such a pool may have by applying a 5% functional obsolescence factor to the dwelling's assessment calculation. In this case, the indoor pool is essentially a separate wing of the dwelling and is, on balance, a desirable and value adding feature to a good quality property such as the Taxpayers. As Ms. Curran testified, they considered the pool an attractive amenity when looking to purchase the dwelling. However, the board does recognize that an indoor pool is not universally considered an amenity, and thus, may either limit the market for such a property or, somewhat, extend the marketing time of a property with a pool, thus, to some extent, the board has considered this factor as part of the 5% functional obsolescence.

The second impression of value is based on a review of the Minuteman Appraisal. The most significant shortcoming of the Minuteman Appraisal is the use of only a \$15 per square foot adjustment for the difference in amount of gross living area between the subject property and the comparables.² The board finds the \$15 square foot gross living area adjustment to be woefully inadequate to recognize the contributory value and the quality of the finish in the subject property and the comparables. The Irwin Analysis derived an estimate of \$100 per square foot based on comparing the smallest and largest square footage and prices per square foot of his comparables. Applying the Irwin Analysis' \$100 per square foot adjustment to the Minuteman Appraisal results in a range of revised indicated market values for the five comparables of \$1,129,500 to \$1,491,000. Again, this revised value indication of the Minuteman Appraisal gives another indication of value and is generally supportive of the board's revised assessment of \$1,405,600.

The third and last impression of value is that of \$1,250,000 estimated in the Irwin Analysis. As stated earlier, while on balance the board gives more weight to the Irwin Analysis than it does to either the Town's assessment calculation or the Minuteman Appraisal, the Irwin Analysis did not discuss or adjust for any difference in quality of the comparables vis-à-vis the subject property. While it is not possible for the board to quantify such adjustments, four of the six sales have lower grade designations by the Town, and thus, if correct, it is likely some

² At hearing, a number of estimates of the 73 Blood Lane Property's gross living area were submitted. The Town, on the assessment-record card, estimates living area at 9,180 square feet. Mr. Hurley, after interior inspection, adjusted his estimate of living area to 8,176 square feet (as indicated in his assessment analysis in Municipality Exhibit A) based on a correction for the two foyer areas. However, Mr. Hurley noted the Town also understated the number of bathrooms and that, in his opinion, the reduced square footage and the increased bathrooms approximately offset each other. The Minuteman Appraisal estimates 7,861 square feet by accounting for the living area on the first and second floor only and accounted for the third floor living space as two finished attic rooms. If the 1,218 square feet of the third floor "attic" area (as shown on p. 3 of the Minuteman Appraisal's addendum) are added to the first and second floor living areas, the total living area square footage would be 9,079, quite similar to the Town's assessment-record card's indicated living area of 9,180. Because these differences are relatively slight, the board, for simplicity, has in its calculations used the living area calculations of the assessment-record card.

adjustments for quality would move the overall indicated value of the Irwin Analysis closer to the board's assessment finding of \$1,405,600.

In summary, as noted earlier, while there is no one absolute market value finding, the board's revised assessment places the property's assessment in a more logical relationship to the market and assessment evidence submitted by the parties. It is now assessed less than the Bousquet Property, which the board has found is a notably superior property. It is also valued less than the Town's Comparable #1 at 25 Arrowhead Drive in Bedford, New Hampshire, but more than the smaller property at 44 Golden Drive in Bedford, New Hampshire.³

Bell Lane Property

Here, the singular issue on appeal is whether the improvements on the property add to the property's market value. Both parties agreed the highest and best use of either the 3.3-acre area not in current use or the entire tract of 120 acres was for residential subdivision and development. The question then is, do any of the improvements provide any interim use value? Interim use is discussed in part in The Appraisal of Real Estate as follows:

[Interim use is] [t]he temporary use to which a site or improved property is put until it is ready to be put to its future highest and best use.

...

An interim use may or may not contribute to the value of the land or the improved property. If an old building or other use cannot produce gross revenue that exceed reasonable operating expenses, it does not contribute to property value.

...

³ Mr. Irwin presented some anecdotal evidence that the purchaser of 44 Golden Drive, Bedford believed Bedford is a superior location to Hollis. However, the board notes no adjustment was shown in the Minuteman Appraisal for the two Bedford, New Hampshire properties, including 44 Golden Drive. Thus, the board finds there was inadequate evidence to make a qualitative difference between the two locations.

The principle of consistent use, which holds that land cannot be valued based on one use while improvements are valued based on another, must be considered when properties are devoted to temporary, interim uses.

The Appraisal Institute, The Appraisal of Real Estate 324 (12 ed. 2001).

The board finds the farm buildings do not serve any interim use that contribute to the property's transmissible market value. While they may have some value in use to a person for storage or agricultural purposes, the market rental value of such buildings is significantly less than the reasonable cost to maintain such structures, and thus, the board finds the agricultural structures have no transmissible value and should not be assessed.

The dwelling is a more difficult determination. The house has been vacant for over 10 years and its heating and plumbing systems would have to be replaced due to freezing and lack of maintenance. Further, the photographs and the description of the property indicate that significant renovations would have to occur to make the property useful as either a single or a two-family dwelling as it once was. Despite the deferred maintenance, however, the board concludes the dwelling does contribute some value and that a prospective purchaser, that did not have immediate subdivision intentions with the property, could renovate the property to obtain one or two modest rental units whose rental income would likely exceed the operating expenses. The fact that the current owner has not maintained the property nor insured the property, while some indication of the dwelling's value and desirability, is not conclusive in this case. On balance, the board concludes the house has some value, largely as a shell, to be renovated for an interim residential use. The Town recommends reducing the assessed value to \$67,200 by estimating the dwelling's residual overall percent good at about 38% due to its deferred maintenance and lack of heat and water. No other evidence was submitted as to the building's value other than the Taxpayers' assertion that it had no contributory market value. The board

finds the Town's estimate of 38% remaining value and resulting \$67,200 value is consistent with our finding that there is some remaining transmissible value to the basic structure of the dwelling to contribute towards renovation for an interim use.

In summary, the board finds the assessment, based on the revised assessment-record card submitted by the Town (Municipality Exhibit C), to be \$252,594 (land including current use \$185,194; dwelling \$67,400).

If the taxes have been paid, the amount paid on the values in excess of \$1,405,600 on the 73 Blood Road Property and \$252,594 on the Bell Lane Property shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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(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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David Irwin, Tax Choice Services, Post Office Box 1297, Hillsboro, New Hampshire 03244, representative for the Taxpayers; and Chairman, Board of Selectmen, Town of Hollis, 7 Monument Square, Hollis, New Hampshire 03049.

Date: May 5, 2005

Anne M. Stelmach, Clerk