

Philip P. and Joyce A. Krill

v.

Town of Franconia

Docket No.: 20048-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$560,500 (land \$181,400; buildings \$379,100) a single-family home on a 1.52-acre lot (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) based on an appraisal the Property’s market value on April 1, 2003 was \$475,000;
- (2) the Property’s assessment is disproportionate when compared to other properties in the Forest Hills subdivision;

(3) the lot value assigned to the Property is disproportionate compared to other similar properties, especially the Hesler property; and

(4) compared to the Town's assessment methodology for two-story houses, the Taxpayers are being penalized for building a one-story home;

The Town argued the assessment was proper because:

(1) property values have been increasing at a faster rate than the appraiser recognized;

(2) appraisals done for refinancing are typically 10% less than market value; and

(3) based on the Taxpayers' appraisal, with some adjustment, the Property is not disproportionately assessed.

Board's Rulings

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

The Taxpayers testified they had an appraisal performed during their application for a real estate loan from a lending institution. The Taxpayers contend because the appraisal's estimate of value was dated only two months before the effective date of the assessment, April 1, 2003, it was the best evidence of the Property's market value.

The board finds, however, the appraisal's sales comparison analysis grid is flawed in some areas. A number of adjustments, indicated by other evidence, results in a revised market value estimate that supports the Town's assessments.

First, the appraisal estimated the rate of appreciation for properties in the Town at 4% per annum. The Town testified property values were increasing at a rate between 20% and 24% per year during the time period spanned by the appraisal's comparable sales' selling dates and the effective date of the assessment, April 1, 2003. The board finds, given the testimony at the

hearing, property values were increasing in the Town at a significantly greater rate than the rate used in the appraisal. The board has applied a 1.833%¹ per month appreciation rate to the comparable sales used in the appraisal to more accurately reflect the real estate market conditions in the Town during the period of time in question.

Second, the board finds the significant difference between the Property's four-car garage and the two-car garages associated with each of the comparable sales warrants an adjustment to recognize the contributory value of this component. The board has adjusted, based on its experience, each of the comparable sales by \$8,000 (\$4,000 per extra garage stall x 2). Making these adjustments on the appraiser's grid yields revised indications of value for the Property based on the three comparable sales of \$599,000 for Comparable Sale #1, \$538,300 for Comparable Sale #2 and \$514,100 for Comparable Sale #3. In the appraisal, the comparable sales are weighted in inverse proportion to the magnitude of their gross adjustments. The board has adopted the appraiser's methodology and weighted Comparable Sales #1 and #2 equally at 40% and Comparable Sale #3 at 20%. Adding the weighted values indicated by each of the comparable sales yields a revised market value for the Property of \$558,000 (\$557,740, rounded) based on these two adjustments alone. (In addition to the two previously discussed factors, the board reviewed all the appraisal's adjustments for reasonableness and questions, for example, the accuracy of only a \$22 per-square-foot gross living area adjustment used for a dwelling the appraiser described as a "large, good quality home." However, any additional revision increasing this number would only increase the market value indications for the Property based on the comparable sales and would be an unnecessary exercise given the previous two adjustments.)

¹ This rate was determined by taking the midpoint of the 20% - 24% range (22%) and dividing by the 12 months in a year ($22\% \div 12 \text{ mos.} = 1.833\% \text{ per month.}$)

The Taxpayers also testified the Hesler property had views that were at least as nice as the Property and that the 300 condition factor applied to the Hesler property should have been the same as the 400 factor applied to the Property. The board finds it cannot determine which number is correct, 300 or 400, based on the evidence and testimony presented. The board reminds the parties that justice requires an order of abatement not relieve a taxpayer from bearing his or her share of the common burden of taxation, notwithstanding any inconsistent methodology between assessments. Porter v. Town of Sanbornton, 150 N.H 363, 368 (2003). (Proving the municipality lacked a “sound methodology” when it made an assessment was not sufficient to grant an abatement where there was no proof of resulting disproportionality.)

Further, the Taxpayers argued the Town was penalizing them for building a one-story house as the unit cost for one-story dwellings are more than those for two-story dwellings of approximately the same gross living area. The Taxpayers presented no market value evidence to support their assertion. The board finds this argument to be misplaced. In fact, the sale of the Ainsworth property indicates the market reflects the fact that it is more expensive to build a one-story house than it is to build a two-story dwelling containing the same gross living area. The extra cost is usually attributable to the significantly larger basement and roof areas associated with a one-story dwelling of the same size. As further support that the Town did not discriminate against one-story houses is the fact the Taxpayers’ own appraiser made no adjustment for one story versus two story and made simple adjustments for the gross living area irregardless of the type of house. In the appraisal, the appraiser wrote in his supplemental addendum under the “style” comments heading “[m]arket studies have shown that the style of a home has little effect on value . . . and therefore several different styles may be used in an appraisal without adjustment”

As a final note, the board considered the Taxpayers' testimony regarding the fact they had paid \$80,000 in 1998 for the vacant lot and then paid just under \$500,000 to have the dwelling and associated site work completed. This construction was completed in 2001 for a total cost of \$570,000 to \$575,000. This number could be adjusted for appreciation, at the previously determined rate, forward to the April 1, 2003 assessment date and be further support for the determination the Property was not disproportionately assessed. The \$110,000 lot value contained in the appraisal's cost approach value also indicates that substantial appreciation has occurred since the Taxpayers' \$80,000 purchase in 1998.

Based on the evidence and testimony submitted, primarily the value indicated by the revised appraisal, the board finds the Taxpayers have not proven the Property is disproportionately assessed and the appeal, therefore, is 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(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: Philip P. and Joyce A. Krill, Post Office Box 136, Franconia, New Hampshire 03580, Taxpayers; and Chairman, Board of Selectmen, Post Office Box 900, Franconia, New Hampshire 03580.

Date: August 12, 2005

Anne M. Stelmach, Clerk