Bruno D'Agosto and Maria Barton

v.

Town of Lyndeborough

Docket No.: 20460-03PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $255,200 (land $76,800; buildings $178,400) on Map 13/Lot 72, a single-family home on an 8-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 attended the hearing and were also represented by Brent Todd, their son-in-law. The Town did not have any representative at the hearing.

The Taxpayers argued the assessment was excessive because:

(1) the Town's contract assessor, Vision Appraisal Technology ("Vision"), made errors in measuring the house on the Property when the Town did a revaluation in tax year 2003 (to follow the last revaluation conducted in 1988);

(2) subsequently, the Taxpayers pointed out water damage and radon problems to the Town;

(3) while the Town corrected the measurement errors and applied temporary additional depreciation for water damaged siding and radon in the water, the Town then increased the grade of the house from "average + 20" to "good" ;

(4) the Town has not cooperated in providing information and may have changed the grade to compensate for the other errors it adjusted;

(5) the house is an "average house," with nothing changed in 20 years, and the Taxpayers purchased the house more for its gardening opportunities than for the house and its other features;

(6) when Vision physically inspected the house, it did not change the grade from what it was previously, either because of its "post and beam" construction or for any other reason and, in fact, Vision's system does not have a "good" grade, which the Town later applied;

(7) the appeal document and the Taxpayers' April 15, 2006 letter to the board support the abatement requested;

(8) changing the grade to "average + 20" would bring the assessed value down to $239,100;

(9) significant costs will be incurred in making needed repairs to the Property; and

(10) the purchase price of the Property ($290,000) is not indicative of its value and the Taxpayers 'probably' overpaid for it.

Although the Town did not attend the hearing, the documents reflect the following arguments to support the assessment:

(1) the Property was purchased for $290,000 in July, 2002, as shown on the assessment-record card; and

(2) through two abatements, the Town corrected the measurements and applied temporary depreciation reducing the assessed value to $255,200 from the initial assessment of $300,500.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove that the Town's abated assessment of $255,200 is disproportionate.

As a preliminary matter, the board must express disappointment that no one from the Town attended the hearing to provide evidence as to the propriety of the abated assessment and the Town's assessing methodology. The fact that the 2003 reassessment performed by Vision resulted only in a level of assessment of 84%, as indicated by the State of New Hampshire Department of Revenue Administration's ("DRA") 2003 median ratio, and the fact the Town increased the grade of the Taxpayers' home while making corrections for dimensions of the Property during the abatement process raised questions as to Vision's and the Town's methodology during the 2003 reassessment year. However, the board notes, based on the Taxpayers' testimony and the increase in the Town's median ratio from 66.9% in 2004 to 96.8% in 2005 as determined by the DRA (and the corresponding reduction in the coefficient of dispersion from 17.4% to 5.10%), the Town has performed a subsequent assessment update in 2005. This apparent update by the Town is in keeping with its RSA 75:8 and 75:8-a responsibilities to periodically appraise property and annually ensure assessments are adjusted to maintain reasonable proportionality. Thus any methodology concerns with the 2003 reassessment have been largely mooted by the 2005 update. Further, even if for argument

purposes the Town's methodology was found to have been flawed in 2003, such a finding, in and of itself, does not necessarily prove the assessment is disproportionate. See Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003).

Notwithstanding the concerns as to the Town's methodology, the board finds the Taxpayers' assessment was not shown to be disproportionate relative to the only market evidence submitted, the Taxpayers' purchase of the Property in July 2002 for $290,000. Applying the 2003 median ratio of 84% to the assessed value provides an indicated market value of $303,800 (rounded). This is not unreasonable given the sale price and the fact the April 1, 2003 assessment date is nine months later in an appreciating market.

The Taxpayers also argued the purchase price of $290,000 could have been in excess of the Property's market value due to no home inspection having been performed, no financing and accompanying appraisal having been done, the short time the Property had been on the market and the quickness of the Taxpayers' offer to purchase the Property at the asking price. While these factors lend some credence to this argument, the board is not convinced the sale price was necessarily in excess of the Property's market value. The real estate market in 2002 was extremely strong and largely a seller's market where many times buyers would meet the asking price or bid it up to secure closure on a specific property. In this case, the Taxpayers testified they had been looking for a property to purchase in the area for over a year, that they were represented by their own real estate broker and the broker advised them there were multiple potential buyers interested in it. Under these circumstances, and lacking any appraisal or other evidence to the contrary, the board finds the Taxpayers failed to rebut the presumption that the purchase price reflected market value. Consequently the board finds there was insufficient evidence to disqualify the sale as an arm's-length transaction and thus find it is generally indicative of the Property's market value. See Appeal of Lakeshore Estates, 130 N.H. 504, 508

(1988) (unless it can be demonstrated clearly that a sale was not an arm's-length transaction, the sale price is one of the "best indicators of that properties value.")

In short, while the board understands the Taxpayers concern of having the dwelling "saddled" with what they believe is an improper grade and its impact on subsequent year's assessments, the board finds the resulting 2003 assessment is not disproportionate. The board would note the Taxpayers have subsequent year appeal rights when and if the temporary depreciation changes are removed and can at that time, request an abatement and file an appeal for those subsequent years if they believe the resulting assessment is disproportionate to market value at that time.

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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Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Brent Todd, PO Box 3405, Concord, NH 03302, Taxpayers' representative; Bruno D'Agosto and Maria Barton, 30 Putnam Hill Road, Lyndeborough, NH 03082, Taxpayers; and Chairman, Board of Selectmen, Town of Lyndeborough, PO Box 6, Lyndeborough, NH 03082.

Date: 12/27/06

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Anne M. Stelmach, Clerk