Sharad and Manisha Aggarwal

v.

Town of Durham

Docket No.: 20521-03PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $329,500 (land $106,000; buildings $223,500) on Map 16, Lot 4-32 a single-family residence (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property was acquired in November 2001 for $269,000 which, if trended by an appreciation rate of ½ percent per month, indicates a market value of approximately $292,000 as of April 1, 2003;

(2) an appraisal done for refinancing purposes in February 2003 estimated a market value of $290,000;

(3) comparing the dwelling to other properties in the area (in particular 7 Sandy Brook Drive) indicates the dwelling grade should be "average +10" rather than "average +20"; and

(4) the dwelling has some building components, such as windows, cracked tiles, chipped counter, etc. that indicate inferior quality materials and workmanship and warrant a greater depreciation than applied by the Town.

The Town argued the assessment was proper because:

(1) the property at 7 Sandy Brook Drive was inappropriately graded "average +10" because all other dwellings in that subdivision were graded "average +20";

(2) the refinancing appraisal has inadequate adjustments in the sales grid such as no time trending of sales and only a $20.00 per square foot gross living area adjustment;

(3) the physical problems with the Property do not appear to be as significant as testified to by the Taxpayers; and

(4) a sales comparison analysis (Municipality Exhibit A) utilizing the assessment differences contained on the assessment-record cards indicates a market value of the Property of $335,000.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $305,600 (land $106,000; buildings $199,600). This abated assessment is based on revising the grade of the dwelling to an "average +10"[1] and increasing the depreciation from 7 to 10%.

[1] While the board does not have access to the Town's "Vision" assessment software to definitively determine how much the "grade index" factor is reduced by dropping the dwelling's overall grade to "average +10", the board has estimated a revised factor of 1.17 based on a review of other assessment-record cards submitted and the board's experience.

While normally the sales price of a property is considered the best evidence of a property's market value (Appeal of Lakeshore Estates, 130 N.H. 504,508 (1988)), the board finds the time trended market value of the Taxpayers' purchase price in November 2001 does not lead to a conclusive indication of market value because of the possibility of a greater rate of appreciation than ½ percent per month. While not giving conclusive weight to the time trended sales price, the board does not entirely dismiss its indication of market value and finds that it is some evidence of overassessment.

Likewise the board does not give conclusive weight to the refinancing appraisal's market value conclusion because of some of its shortcomings as testified to by the Town. Further it has also been the board's experience that in many instances refinancing appraisals conservatively estimate a property's market value due to the nature of the purpose of the appraisal.

In general, (based on the review of the various assessment-record cards presented) the board finds the Town consistently graded dwellings for their relative quality of materials and workmanship. However in this case we find the Town has overstated the grade of the Property. This conclusion is based on a review of the photographs, both interior and exterior, of the Property and the photographs and assessment-record cards' descriptions of the comparables submitted by both parties. For example, the exterior photographs submitted for 303 Packers Falls Road and 7 Sandy Brook Drive show exterior trim details and fenestration superior to that of the Property. Further based on the photographs submitted by the Taxpayers, the board concludes the Property is in slightly less than average condition for its age and warrants additional depreciation.

The resulting revised assessment of $305,600 indicates a not unreasonable appreciation rate of approximately .085% per month from the Taxpayers' November 2001 purchase date and overall the abated assessment is more proportional than as assessed by the Town.

If the taxes have been paid, the amount paid on the value in excess of $305,600 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, <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: Sharad and Manisha Aggarwal, 14 Sandy Brook Drive, Durham, NH 03824, Taxpayers; and Chairman, Town Council, Town of Durham, 15 Newmarket Road, Durham, NH 03824.

Date: 1/5/06

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Melanie J. Ekstrom, Deputy Clerk