

Lillian and Stanley Kulesza

v.

Town of Sandown

Docket Nos.: 5907-89, 8605-90 and 11064-91 PT

Stanley and Nancy Kulesza

v.

Town of Sandown

Docket Nos.: 5908-89, 8606-90 and 11063-91 PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989, 1990 and 1991 assessments of Lot 97 - \$55,300 and Lot 98 - \$60,400 (\$60,500 in 1991) on two mobile homes each with an acre lot (the Property). These appeals were consolidated for hearing. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved disproportionality.

The Taxpayers made a lengthy presentation, all of which will not be reiterated here. The Taxpayers submitted as Exhibit 2 substantial information which was part of the record and was taken into consideration by the board.

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The Taxpayers argued, among other things, the assessments were excessive because:

- (1) the land assessment was excessive, especially compared to prior assessments and assessments on other lots;
- (2) the Town's entire methodology was suspect and full of errors;
- (3) the electric easement was on the wrong parcel;
- (4) the mobile homes were worth only \$1,000 each as supported by the NADA mobile home manual; and
- (5) the total assessments should be \$21,000 for each lot.

The Town argued the assessment was proper because:

- (1) it was supported by two nearby sales; and
- (2) it was arrived at using the same methodology as used throughout the Town.

Based on the evidence, we find the correct assessment should be:

Lot 97 - \$47,070 (land, \$41,310; building, \$5,700). Land - 42,500 square feet x \$1.35 x .9 x .8 = \$41,310, building - \$9,600 x .4 (additional depreciation) = \$5,760.

Lot 98 - \$49,040 (land, \$40,580; building, \$8,460). Land - \$40,840 x 1.38 x .9 x .75 = \$40,580, building - \$9,400 x .9 (additional depreciation) = \$8,460.

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These assessments are ordered because the board concluded these properties had two possible values: (1) as sales in their present condition, being older manufactured homes with acre lots; or (2) as lots to be cleared

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and new homes built or placed on the lots. The highest and best use of the Properties would be as #2. Therefore, we adjusted Lot 97 by 20% and Lot 98 by 15%. We also: (1) corrected the lot sizes; (2) gave Lot 98 the easement reduction (-10%); and (3) increased the depreciation on the buildings (Lot 97 -40% and Lot 98 -10%).

We reject the Taxpayers' argument that the Properties were worth only \$21,000 each. These lots have market value and because the buildings can be lived in they too have value. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers must make a showing of the Property's fair market value. This value will then be compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The remainder of the Taxpayers' evidence was without merit since it focused on past assessments and not market value or current comparable assessments. Concerning possible errors in other assessments, the board finds the Taxpayers' Property was not overassessed. However, there was evidence

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indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of

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underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

If the taxes have been paid, the amount paid on the value in excess of Lot 97 - \$47,070 and Lot 98 - \$49,040 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Stanley, Lillian and Nancy Kulesza, Taxpayers;

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Chairman, Selectmen of Sandown; and Scott Bartlett, MMC.

Dated: July 22, 1992

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Valerie B. Lanigan, Clerk

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