

Mark E. and Delvina L. Kearney

v.

Town of Hinsdale

Docket No.: 6225-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$157,800 (land, \$37,500; buildings, \$120,300) on a 9.24 acre lot with a two-story cape-style house (the Property). The Town failed to appear, but consistent with our Rule, TAX 102.03(g), the Town was not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was 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 argued the assessment was excessive because:

(1) the Property was purchased in the fall of 1987 for \$144,000 and at the time of the purchase, the Taxpayers were unaware that there was a greyhound dog kennel (with 33 dogs boarded for racing at the Hinsdale Race Track) on the property behind the subject Property which causes constant disruption and

devalues the Property;

- (2) approximately 7 acres of the 9.24 acre lot is swampland;
- (3) the Town has allowed a mobile home at the abutting property line of Streeter Lane which devalues the Property;
- (4) there are two junkyards approximately one quarter of a mile away on Middle Ox Bow Road;
- (5) Dart Everett, Everett Real Estate Services, Inc. estimated the fair market value of the Property on September 21, 1992 at \$120,000; and
- (6) the fair market value as of April 1, 1989 is between \$120,000 to \$125,000.

The Town mailed three property assessment cards to be used at the hearing with no additional evidence.

Board's Rulings

The board's inspector inspected the property, reviewed the property tax card, and filed a report with the board. This report concluded the proper assessment should be \$153,400 (land \$33,100; buildings \$120,300). The inspector made the following adjustment to the Town's assessment: adjusted the back acreage for topography (-45 percent).

Based on the evidence, we find the correct assessment should be \$145,730. This assessment is ordered because:

- (1) the majority of the back acreage is swampland and a 45 percent topography adjustment has been applied; and

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(2) the existence of and constant disruption caused by the neighboring dog kennel along with other neighborhood factors such as the junkyards would have an affect on the marketability of the Property and a 5 percent adjustment to the total has been applied.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

If the taxes have been paid, the amount paid on the value in excess of \$145,730 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

George Twigg, III, Chairman

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark E. and Delvina L. Kearney, Taxpayers; and Chairman, Selectmen of Hinsdale.

Dated: February 10, 1993

Valerie B. Lanigan, Clerk

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