

Peter A. and Shirley M. Polinski

v.

Town of Hampstead

Docket No.: 6351-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$139,100 (land, \$61,000; buildings, \$78,100) on a 1.44 acre lot with a one-story house and in-ground pool (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) this is a residential Property in a commercial zone;
- (2) the land value is fair but the house is valued too high;
- (3) East Coast Lumber is located behind the Property and trucks leaving at 5:00 a.m. is disturbing and have had problems with rubbish drifting onto the

Property;

(4) there was a proposal to install an incinerator next to the Property which would have an effect on the market; and

(5) the fair market value of the Property on April 1, 1989 is \$120,000.

The Town argued the assessment was proper because:

(1) the Property is surrounded by commercial properties;

(2) the highest and best use of the Property is commercial;

(2) the assessed value is too low because this Property carries all of the bundle of rights that a commercial property has; and

(3) the assessment represents a residential use value.

Board's Rulings

The Taxpayers, at the board's request, were asked to present additional evidence within 10 days relative to a proposed incinerator and whether it was active or imminent as of April 1, 1989. The Taxpayer's submitted minutes of a Selectmens' meeting May 26, 1980 relative to problems with rubbish disposal by Corinthian Pools. The problem, according to the minutes, was later resolved to the the Polinskis' satisfaction. The Polinski petition in Rockingham Superior Court was dated July 21, 1981. The board finds these documents too remote in time to the 1989 tax year under appeal to be of any probative value as to the impact on market value of the subject property in 1989. In addition, the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been 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.

Peter A. and Shirley M. Polinski

v.

Town of Hampstead

Docket No.: 6351-89PT

Page3

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter A. and Shirley M. Polinski, Taxpayers; and Chairman, Selectmen of Hampstead.

Dated: March 22, 1993

Valerie B. Lanigan, Clerk

0008