

Robert S. and Adrienne P. Newton

v.

Town of Hooksett

Docket Nos.: 6990-89 & 10514-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$132,100 for 1989 and \$129,600 for 1990 on a home in Mammoth View Estates (the Property). The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is denied for 1989 and granted for 1990.

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 raised the sewer issue in their written appeal. The board heard extensive testimony on this issue from other taxpayers. However, 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.

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The Town argued the assessments were proper because:

(1) in 1989 the sewer problems were not known to the market and thus did not affect value; and

(2) in 1990 the assessment was adjusted based on the cost to cure and to bring the assessment up to market value.

The 1989 sales and the evidence show the problems in the subdivision did not affect the 1989 values. Yes, the Property only had a holding tank, but the Taxpayers bought the Property nonetheless. The purchase prices, therefore, refute the argument that an adjustment is required for 1989.

However, given the evidence the board has concluded two adjustments are required to get the 1990 assessments to a reasonable level: a) reduce the land and building value by 5%; and b) reduce the adjusted assessment by another 10%. First, the Town erred in only adjusting the land value. The problems here adversely affected the Property's value as a whole, not just the land value. Second, the additional 10% adjustment is required to reflect the serious detrimental effect caused by the problems in this subdivision. The subdivision had numerous problems, including the developer's bankruptcy, the bank's foreclosure, and the Town's actions--health officer's notices, liens on properties, termination of subdivision approval, non-approval of warrant article. These problems certainly for 1990 hurt values. The values may have been even more greatly affected, but absent better evidence, the board has chosen a conservative adjustment.

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Based on the evidence, we find the correct assessment should be \$113,000 for 1990.

If the taxes have been paid, the amount paid on the 1990 value in excess of \$113,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert S. and Adrienne P. Newton, Taxpayers; and Town of Hooksett Assessing Department.

Dated: August 28, 1992

Melanie J. Ekstrom, Deputy Clerk

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Arthur G. Porelle and M. Judith Porelle v. Town of Hooksett, #10512-90

Robert M. Bullard and Theresa D. Bullard v. Town of Hooksett, #10511-90

Kevin Madden and Laura Madden v. Town of Hooksett, #10515-90

James H. Arvanitis and Lynne Marie C. Arvanitis v. Town of Hooksett, #10513-90

Robert St. Jean and Janet St. Jean v. Town of Hooksett, #10749-90

Burton G. Hawley and Eleanor L. Hawley v. Town of Hooksett, #10510-90

Michael Murphy and Rosa Murphy v. Town of Hooksett, #10516-90

Ruth E. Jennings and Robert Jennings v. Town of Hooksett, #10509-90

Robert S. Newton and Adrienne Newton v. Town of Hooksett, #10514-90

ORDER

This order relates to the "Town's" rehearing motions. The motions fail to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3. Therefore, the motions are denied.

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The board was fully aware of the Town's arguments and previous adjustments. The board weighed the evidence and decided a further adjustment was required because of the problems with the sewerage. As the taxpayers testified, there was great uncertainty about when the municipal sewer would be connected, requiring the taxpayers to use holding tanks. Moreover, the taxpayers testified the sewerage problem made the properties unmarketable since prospective purchasers a) were not interested and b) could not obtain financing, both of which destroyed the properties' marketability. Given this evidence, the board could certainly have ordered even lower assessments, but the board decided to be conservative in its adjustments. Basically, the board found the taxpayers established the properties' market values were drastically reduced by the sewerage problem, but the taxpayers failed to provide sufficient data to warrant more severe reductions

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than ordered even if such reductions might have been warranted. The board understands, as shown on town's table number two, the order reduces in assessments by \$38,240 - \$55,800, but these adjustments are warranted given the significant impact the sewerage problem had on these properties. Obviously, once the sewerage problems are resolved, the negative influence could be removed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

I certify that copies of the within Order have this date been mailed, postage prepaid, to Arthur G. & M. Judith Porelle; Robert M. & Theresa D. Bullard; Kevin & Laura Madden; James H. & Lynne Marie C. Arvanitis; Robert & Jane St. Jean; Burton G. & Eleanor L. Hawley; Michael & Rosa Murphy; Ruth E. & Robert Jennings; Robert S. & Adrienne Newton; taxpayers; and the Town of Hooksett Assessing Department, Michael Curtin, Assessor.

Melanie J. Ekstrom, Deputy Clerk

Date: September 22, 1992

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