

Hawkview Road Associates

v.

Town of Litchfield

Docket No.: 8393-90

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessments as shown on attachment A. (The subdivided lots shall be called "the Lots," and Map 14, Lot 67 shall be called "the Large Lot.") The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, an abatement is granted on the Lots, but no abatement is granted on the Large Lot.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved it was disproportionally taxed.

The Taxpayer argued the assessment on the Lots was excessive because each lot sold at market value for much less than the assessments. The Taxpayer argued the assessment on the Large Lot was excessive because it was

assessed per-acre higher than a similar property (Lot 14-49). The Taxpayer did not submit the assessment card or any other information on Lot 14-49.

The Town submitted a brief to support the assessment. Because the Taxpayer received a copy, the brief will not be reiterated here.

The board finds an abatement on the Lots is proper. No abatement is warranted on the Large Lot because no evidence was submitted to support an abatement. The rest of this decision relates to the Lots only.

Under RSA 75:1, property is to be assessed "at its full and true value in money as they would appraise the same in payment for a just debt due from a solvent debtor \*\*\*." In arriving at a value all relevant factors should be looked at to ensure a just result. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The Town failed to consider a factor in assessing the Lots -- the costs and risks borne by Taxpayer as the owner of a subdivision before all subdivision work was completed and before all lots had sold. Therefore, an adjustment should have been made to reflect this factor. (The Town did make an adjustment to the Lots that did not yet have a developed road.)

Returning to RSA 75:1, the board notes the standard for "full and true value" is that value acceptable as payment for a debt. Surely, if the Taxpayer were to sell or convey the Lots to pay a debt, the purchaser would not pay the Taxpayer or credit the Taxpayer with the retail costs of the Lots.

Rather, the purchaser would take the anticipated retail prices and back out certain costs and factor in certain considerations, e.g., risk. The fact is that on April 1, 1990, the Taxpayer could not sell all of the Lots at their

full value as set by the Town. Thus, consideration must be given for the

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reality. This method is both proper and supported by law beginning with RSA 75:1. See Public Service Company of New Hampshire v. Town of Seabrook, 126 N.H. 740, 746 (1985); Paras, 115 N.H. at 67-68; see also Appeal of Sawmill Brook Development Co., 129 N.H. 410 (1987).

The board did not receive any evidence on how to calculate this factor except the Lots' sales prices. The Taxpayer states these sales were fair market sales, not distress sales. The Town notes the sales occurred approximately one year after the April 1, 1990 assessment date. Finally, in arriving at an assessment, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one perfect assessment of a property. Rather, there is a range of acceptable assessments for each property. The question is thus whether the assessment falls within a reasonable range from a median ratio as indicated by an acceptable coefficient of dispersion following a good reassessment, considering the property involved and other assessments in the municipality. See Wise Shoe Co. v. Town of Exeter, 1991 N.H. 700, 702 (1979); Brickman v. City of Manchester, 119 N.H. 919.

Given the above, the board concludes a factor of 15% must be applied to the assessments to reflect the factors discussed above and to bring the assessments within a reasonable range, giving consideration to the 1991 sales

and the market from 1990-1991. (The board is aware the 1990 equalization ratio was 1.14%.)

The abated assessments are as follows: (These calculations are

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based on the Town's revised assessments.)

Map	Lot	Assessment
14	123	\$ 25,585
14	124	25,500
14	126	25,925
14	127	25,585
14	128	25,500
14	129	25,500
14	130	26,010
14	131	25,925
14	69	47,005
14	86	44,115
13	44	57,460
13	43	45,305
13	41	45,220
14	77	27,625
14	122	<u>25,840</u>
TOTAL		\$498,100
Plus Larger Lot		<u>\$495,700</u>
		\$993,800

If the taxes have been paid, the amount paid on the value in excess of \$993,800 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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I hereby certify that copies of the foregoing decision have been mailed this date, postage prepaid, to William J. Callahan, Jr., General Partner of Hawkview Road Associates; and Chairman, Selectmen of Litchfield.

Dated: November 7, 1991

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Melanie J. Ekstrom, Deputy Clerk