

Jerome C. Riesenbergr and Catherine J. Riesenbergr

v.

Town of Stoddard

Docket No.: 8711-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 adjusted assessment of \$54,400 on a vacant, 5.35-acre lot (the Property). The Town recommended an adjustment to \$39,550. The Taxpayers also own, but did not appeal, another lot in the Town assessed at \$92,450. For the reasons stated below, the appeal for abatement is granted as to the Town's revised assessment.

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) it was excessive compared to two recent sales and the assessment on the adjoining lot (The Taxpayers discussed the two sales (1992 and 1993), using a per-acre analysis.);
- (2) it was based on the lot being subdividable;

- (3) the lot has some wet area; and
- (4) the Town cannot point to any sales to support the assessment.

The Town argued the adjusted assessment was proper because:

- (1) it was consistent with a nearby sale, with another town sale and with other assessments;
- (2) the Taxpayers' comparables do not indicate over assessment, especially given the date and conditions of the sales; and
- (3) the Taxpayers had a relative, who is an assessor, estimate a \$35,000 value.

BOARD RULINGS

The Board finds the Taxpayers did not carry their burden. The Board did not accept the Taxpayers' analysis. The two recent sales proffered by the Taxpayers could not be relied upon because the Taxpayers did not adjust those sales to the April 1, 1990 assessment date. Most importantly, the Taxpayers did not demonstrate what adjustments would be appropriate given the type of sales involved and the difference between the sales properties and the Property.

Under RSA 75:1 assessments must be based on market value, and the Taxpayers' evidence did not establish market value.

The Taxpayers did not present enough 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.

We also did not accept the Taxpayers' evidence concerning the Town's land auction. Obviously, those sales were not market sales. The Taxpayers were unable to indicate what adjustments should be made to equate those sales prices to market sales. The Board finds the Town's sales to be the best evidence of the Property's market value and those sales support the assessment.

If the taxes have been paid, the amount paid on the value in excess of \$39,550 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

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jerome C. and Catherine J. Riesenberg, Taxpayers; and Chairman, Selectmen of Stoddard.

Dated: September 24, 1993

Valerie B. Lanigan, Clerk