

Donald and Elaine Kula

v.

Town of Lincoln

Docket No.: 8795-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$38,000 (land only), consisting of approximately .85 acres (the Property). The Taxpayers 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, 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 their burden and prove any disproportionality.

The Taxpayers argued the assessment was excessive because the Property was purchased in August, 1990, for \$24,250, which they think is the actual value.

The Town argued the assessment was proper because:

1) Taxpayers failed to prove they were disproportionate in comparison to other

assessments;

2) Forest Ridge Development sites were assessed in the same manner as the rest of the Town; and

3) the purchase price paid was a result of an auction and "cannot be considered a fair market, arms length transaction."

The board finds:

1) Taxpayers failed to supply any information of comparable sales and assessments whereas the Town has supplied both sales and assessments on similar properties to support its position;

2) the Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187-90 (1982).

3) the purchase price paid by the Taxpayers was the result of a foreclosure auction and cannot be considered a fair market, arms length transaction. Fair market value is the most probable price a property would bring if exposed for sale in the open market between a willing seller and a willing buyer. See, Public Service of New Hampshire v. Seabrook, 126 N.H. 740, 742 (1985). A foreclosure auction is not a fair market sale. It is also the board's experience that distress sales brings anywhere from 50-80% of a property's true value; and

4) the assessment of \$38,000 is proper.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Date: August 23, 1991

I certify that copies of the within decision have been mailed, postage prepaid, to Donald and Elaine Kula, Taxpayers and to Mary Ellen Pinkham, representing the Town of Lincoln.

Date: August 23, 1991

Melanie J. Ekstrom, Deputy Clerk