

Lakewood Development Corp.

v.

Town of Canaan

Docket Nos.: 9853-90 and 11009-91

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of: \$24,900 on a mobile home (the Home); and \$346,900 on a 12-site, mobile-home park (the Park). 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, the appeal for abatement is granted as to the Home and denied as to the Park.

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 disproportionality on the Home and failed to prove disproportionality on the Park.

The Taxpayer argued the assessment on the Home was excessive because:

1) the Home was not taxable as a dwelling because the Home was not connected to utilities and was only stock-in-trade; and

2) in 1990 the Home was sold to a third party and moved to another site.

The Town argued the assessment on the Home was proper because:

- 1) the assessment-record card was corrected and 15% depreciation was given for lack of sewer and water; and
- 2) the adjusted assessment was consistent with other Town assessments.

The Taxpayer argued the assessment on the Park was excessive because:

- 1) the Park was purchased in 1989 for \$385,000 and the price included business value that was not taxable and a cottage that was assessed separately;
- 2) the Park has not been improved or expanded since purchase but the Town included the expansion potential in the assessment;
- 3) an October 1989 appraisal estimated a \$70,000 value to the land only;
- 4) comparable parks with paved driveways and roads have \$15,100 per-site values yet the Park is assessed at \$18,000 per-site even though it lacks paved roads and driveways;
- 5) the assessed value should be \$238,000 (land \$70,000 - buildings \$168,000) (12 sites x \$14,000 per-site) and should not include the cottage since it is being taxed separately; and
- 6) there are numerous errors on the assessment-record card, e.g., the monthly rent is \$140, not \$150.

The Town argued the assessment on the Park was proper because:

- 1) the Park apparently can be expanded even though the Taxpayer has not yet done so; and
- 2) the best evidence of market value is the Taxpayer's purchase of the Park for \$385,000.

Board's Rulings

The Home

The board finds that under RSA 72:7-a, the Home was not taxable. Under RSA 72:7-a, the Town shall not assess taxes on manufactured housing held for sale or storage by an agent or dealer. The board reads the term "sale or storage" to mean manufactured housing not "suitable" (see RSA 72:7-a) for domestic, commercial, or industrial uses. Thus, if all utilities, water, sewer, heat, and electricity are actually hooked up to the manufactured housing and there is nothing to prevent its use, the manufactured housing should be taxed regardless of whether it is actually being used because it would be "suitable" for use. If, however, all the utilities are not actually hooked up or there is some other impediment to its use it shall not be taxed. Based on the evidence submitted to the board, the Home was not hooked up to utilities and was only stock-in-trade and thus should not have been taxed.

The Park

The board denies the appeal on the Park because the Taxpayer failed to prove disproportional assessment. The Taxpayer submitted evidence to raise a question about the appropriateness of the assessment. However, the Taxpayer failed to convince the board that the assessment was in error. Specifically, the Taxpayer purchased the Park one year earlier -- April, 1989 -- for \$385,000. The Taxpayer did not convince the board that the assessment included business value. Additionally, the comparable sales submitted by the Taxpayer certainly were relevant, but the Taxpayer failed to provide sufficient

information and comparison data from which the board could review those comparables and relate them to the Park. Concerning the Taxpayer's \$70,000 1989 appraisal, the board

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notes that the appraisal only looked at the land value as if vacant when in fact the Park is improved with twelve sites and with the potential for future development. Finally, concerning the future development potential, it is appropriate to tax such potential even if approvals have not yet been obtained.

Obviously, once approvals are obtained the assessment would increase to reflect the approvals.

The Taxpayer did not dispute that the 1989 purchase was an arm's length transaction. Under New Hampshire law, an arm's length purchase price is highly probative evidence of a property's value. See Appeal of Lakeshore Estates, 130 N.H. 504, 508; Howard H. Poorvu v. City of Nashua, 118 N.H. 632, 633.

If the taxes have been paid on the Home, the amount paid on the value in excess of \$24,900 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Lakewood Development Corp., Taxpayer, and Chairman, Selectmen of Canaan.

Dated: March 18, 1993

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order responds to the "Taxpayers'" June 1, 1993 letter, requesting clarification of the board's March 18, 1993 decision. The Taxpayers are correct; the decision contained an error because it discussed a refund based on an assessment where the home should not have been assessed at all. The board, therefore, revises the decision by deleting the second full paragraph on page 4.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I hereby certify that copies of the within Order have this date been sent, postage prepaid, to Dana Rood, President of Lakewood Development Corp.; and the Chairman, Selectmen of Canaan.

Date: June 17, 1993

Valerie B. Lanigan, Clerk

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