

Mark P. and Linda M. Hodgdon

v.

Town of Epsom

Docket No.: 10947-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$74,400 (land \$15,000; buildings \$59,400) on a 2.02-acre lot with a house (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 granted.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers proved disproportionality.

The Taxpayers provided material to support their contention that the Property was overassessed, including a comparable market analysis, comparison

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grids, appraisals, and realtor's letters. The Taxpayers' main arguments were:

- (1) the Property was purchased in September, 1990 for \$130,800, and the purchase price is the best evidence of a property's value;
- (2) the assessment should be \$58,800 (purchase price time adjusted at 1% per-month from July, 1990 to April 1, 1991 = \$120,000 ÷ .49% equalization ratio);
- (3) the assessment was excessive compared to similar properties; and
- (4) the Property was not assessed at the same percentage of market value as other properties in the Town, i.e., the average ratio was 48.9% and the Property was assessed at 61.8%.

The Town argued the assessment was proper because:

- (1) the Property's April 1, 1991 value was not \$120,000 and the equalization ratio is used to estimate a range of value, not to determine an exact value;
- (2) the Taxpayers' purchase was under duress because the FDIC took control of the only two lots still owned by the seller on the closing date;
- (3) the house is quality construction as evidenced by the custom floor plans and blueprints;
- (4) the Taxpayers erroneously calculated the market value and neglected to include the \$1,400 shed value when it did exist on the assessment date;
- (5) the 1992 appraisal is flawed because the comparables were not comparable in age and no adjustments were made for quality differences;
- (6) the realtor's comparable-market analysis included only one property in the Town, which never did sell; and

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(7) the Taxpayers' comparables were assessed well within the range of the Property's assessment, and when the comparables were valued, using the market approach with adjustments for differences, they supported the Property's assessment.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the Town's adjusted assessment was proper.

Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board rejects the inspector's report because it was based only on a review of the file and not an on-site inspection or independent analysis

Board's Rulings

Based on the evidence the board finds the proper assessment to be \$64,150. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted.

See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and

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building, and the Town shall make this allocation in accordance with its assessing practices.)

In this case, the board finds the best evidence of market value to be the sale price of the Property in September of 1990.

"The sale price of a piece of property is evidence of its value unless the court finds on evidence that there was not a fair market." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988).

The board finds that the transfer was indeed arms-length in this case. The Town presented some assumptions of possible financial duress on the part of the grantor as the basis of the sale not being arms-length. However, the Taxpayers adequately described the financial situation of the developer/grantor which indicated there was no undue duress in the negotiated sales price. Further, the board finds the appraisal done for the financing prior to the purchase supports the consideration price.

Because the sale occurred in September 1990, the sale price needs to be time trended to the assessment date under appeal of April 1, 1991. The Taxpayers proposed a negative adjustment of 1% per month based on the difference in value of the May 1990 appraisal and the January 1992 appraisal of the Property. The Taxpayers stated that because there was no evidence to the contrary, the decline indicated by these two appraisals was considered to be constant over that time period. The board disagrees. The board reviewed the equalization ratios for the respective years as determined by the

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department of revenue administration. The board finds that in 1990 the ratio was .48, in 1991, .49 and in 1992, .59. The change in ratios indicate on a

town-wide basis the decline from 1990 to 1991 was approximately 2% $(.49 - .48) \div .48$) and the decline from 1991 to 1992 was approximately 20% $(.59 - .49) \div .49$). In short, the total decline over the two years is similar to the total decline calculated by the Taxpayers; however, the ratio changes indicate the real estate market in Epsom declined only slightly from 1990 to 1991, but significantly from 1991 to 1992. Therefore, the board adjusts the sales price of \$130,800 by 1% to arrive at an indicated market value as of April 1, 1991, of \$129,500.

The Taxpayers indicated they had added a shed with an overhead door prior to April 1, 1991 with a cost of \$1,400. The board finds the actual cost of the shed is the best evidence as to its contributory value. The Taxpayers failed to prove their contention that a 10' x 15' shed with an overhead door would not have a contributory value relative to its actual cost.

In conclusion, the board finds the total assessment is calculated as follows:

market value	\$129,500	
shed	<u>\$ 1,400</u>	
total	\$130,900	
	<u>x .49</u>	(1991 equalization ratio)
	\$ 64,150	

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If the taxes have been paid, the amount paid on the value in excess of \$64,150 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law.

Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark P. and Linda M. Hodgdon, Taxpayers; and Chairman, Selectmen of Epsom.

Dated: June 30, 1994

Lynn M. Wheeler, Deputy Clerk

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