Sarah and George F. Cahill, Jr.

v.

Town of Stoddard

Docket No.: 10962-91 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

$95,100 on Lot 4.2, a vacant, 15.8-acre lot; and

$99,200 on Lot 05, a vacant, 18.8-acre lot (the Properties).

The Taxpayers own, but did not appeal, 20 other separately assessed lots, four of which contain improvements. For the reasons stated below, the appeal for abatements is granted.

The Taxpayers have the burden of showing the assessments were 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). While we find the Taxpayers did not fulfill their burden of proof, the board finds the assessments should be abated to the amount recommended by the Town.

The Taxpayers argued the assessments were excessive because:

(1) two sales (the Codman sale and the Norwood sale) occurring on the same road as the Properties in 1992 and 1993 for substantially less than their assessed values indicate the land is excessively assessed;

(2) the lots would be difficult to subdivide due to the costs required to improve the road and the wetlands on the lots;

(3) the lots are worth approximately $1500 per acre based the two sales on the road; and

(4) the Town's Panceria sale is on Dead Brook which is both fishable and swimmable and thus is not comparable to the Properties.

The Town at the hearing recommended reducing the assessments to account for the wetlands, road condition and lack of utilities to: map 419 lot 4.2: $52,250 and map 419 lot 5: $61,650. The Town argued the revised assessments were proper because:

(1) the Codman sale was a resale of a foreclosed property by the bank; such sales are normally below market value;

(2) the Norwoods were unknowledgable sellers and thus their sale is not indicative of the market;

(3) a sale used by the Town during the reassessment, the Panciera sale of 12.45 acres for $49,000 in 1989, supports the revised assessments of the Taxpayer's lots; and

(4) the Codman property had been rented and damaged by the tenants prior to the foreclosure by the bank.

Board's Rulings

Based on the evidence, we find the correct assessment for Lot 4.2 should be $52,250, and Lot 05 should be $61,650. These assessments are ordered because:

(1) the adjustments made by the Town for the road condition, wetlands and lack of utilities are reasonable;

(2) the Taxpayers' only evidence of market value was the two sales (Codman and Norwood); the sales were not arms-length indications of market value because one involved the resale by a bank of a foreclosed property and the other involved a seller who was under some financial pressure to sell and was not fully knowledgeable of the market;

(3) The Taxpayers did not make a credible showing of the Property's fair market value and did not prove the Town's recommended assessments are disproportional to the general level of assessment in Stoddard for 1991. 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; and

(4) the Taxpayers compared the assessments on a per acre basis; however, differing acreage assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher acreage values for smaller parcels than for larger parcels and vice

versa, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per acre basis to differ to reflect this market phenomenon.

If the taxes have been paid, the amount paid on the value in excess of $$52,250 for lot 4.2 and $61,650 for lot 5 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

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Sarah and George F. Cahill, Jr., Taxpayers; and Chairman, Selectmen of Stoddard.

Dated: September 22, 1993

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Valerie B. Lanigan, Clerk