

Kerin L. and Joan A. Shaughnessey

v.

Town of Sutton

Docket No.: 10975-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$213,350 (land \$48,650; buildings \$164,700) on a 4.1-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 carried their burden and proved disproportionality.

The Taxpayers submitted voluminous evidence to support their contention that the Property was overassessed, including a videotape, appraisals, and numerous assessment-record cards.

The Taxpayers main arguments concerning overassessment were:

- (1) four appraisals prepared between 1986 and 1992 that estimated an average value of \$317,800;
- (2) the assessment was based on the board of tax and land appeals' ordered assessment for tax year 1988, which was unrealistic because it was based on the market in 1988 and not in 1991;
- (3) the Town's selectmen's homes were substantially better properties but assessed less than the Property; and
- (4) the Town voted in 1987 to relinquish all interest in an extension of Rowell Hill Road into the development therefore the Property's only access is through New London.

The Town argued the assessment was proper because:

- (1) a comparable property sold in July 1992 for \$395,000, which supported the Property's assessment;
- (2) the same methodology was used throughout the Town;
- (3) the Taxpayers' appraisals should be given little weight because a comparable sale is the best evidence of a property's value; and
- (4) the 1991 equalization ratio was 51% and the Taxpayers' calculations were based on 44%.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$181,050, which equates to a \$355,000 equalized value ($\$181,050 \div .51$, the equalization ratio). This decision is based on the best market data provided to the board, which were the two 1991 appraisals.

Appraisals

August 1991	cost	\$358,300
	market	\$330,000
December 1991	cost	\$348,300
	market	\$320,000

These valuations, however, must be time adjusted to the April 1, 1991 assessment date. We have used a -.5% time adjustment per month. The time adjusted values are as follows.

Time-Adjusted Appraisals

August 1991	cost	\$365,460
	market	\$336,600
December 1991	cost	\$362,200
	market	\$332,800

Given the high quality construction and features of the Property (see comments section in appraisals), the board has, unlike the appraiser, given more weight to the cost approach to ensure the Property's superior features are sufficiently reflected in the resulting value. Therefore, we chose the value of \$355,000.

The Taxpayers submitted a voluminous amount of information. They did so without providing adequate summary of the material and without describing how the material specifically related to their Property. The Taxpayers have the burden of proof here, and they have the burden to put together material that is relevant and is self-explanatory. The board is not required to review information provided by the Taxpayers and to then make the calculations,

summaries and conclusions from that material. The board is required to focus

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on the Property's relative market value, and we have done so by looking at the best evidence presented -- the appraisals.

The rest of the material was not reviewed for the reasons stated above and because we found it to be unduly repetitious and in many ways irrelevant.

For example, the Taxpayers argued they were overassessed compared to certain other properties. However, having viewed part of the video, it is possible those properties were underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick.

The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

The Town is obligated by RSA 75:1 to ensure that assessments are based on market data. RSA 75:8, furthermore, requires the Town to annually review the market and the assessments and to make whatever adjustments are appropriate. The Town did not supply any adequate market data for 1991. It is insufficient to submit market data and comparative assessments that were set many years ago and that were not adjusted as the market changed. The board understands it has been the practice in certain municipalities to simply

set assessments in a revaluation year and to then not adjust those assessments

or review the market or assessments until another revaluation has been

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performed. The board, however, points out that RSA 75:8 specifically requires such review on an annual basis, and this was not done in this case.

Therefore, we are unable to give any weight to the Town's assessment.

The Town also argued the Finnel's sale for \$395,000 supported the assessment. However, the Town did not supply information concerning that sale or what adjustments would be required to make that sale price comparable to the Property's value.

Based on the best market data available and the board's conclusion that this Property is of a superior nature, we have determined a 1991 market value of \$355,000, which when reduced by the 51% equalization ratio results in an assessment of \$181,050.

If the taxes have been paid, the amount paid on the value in excess of \$181,050 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. This decision applies to tax year 1991 because the Town was revalued in 1992.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a

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prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kerin L. and Joan A. Shaughnessey, Taxpayers; and Chairman, Selectmen of Sutton.

Dated: December 9, 1994

Lynn M. Wheeler, Deputy Clerk

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