

**Herbert G. and Audrey Gustafsson**

**v.**

**Town of Sutton**

**Docket No.: 10995-91-PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$118,300 (land, \$19,600; building, \$98,700) on 2.3 acres with building and attached garage (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 this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was purchased in February 1989 for \$235,000; and
- 2) an appraisal dated August 23, 1991 estimated the market value to be \$200,000.

The Town argued the assessment was proper because:

- 1) a recent sale within the same subdivision as the Taxpayers, having similar characteristics, sold for \$395,000 having an assessment of \$192,600. Applying the Town's ratio of 51% demonstrates the Taxpayers' assessment is in line;
- 2) a sales analyses from previous years indicated property values were properly assessed;
- 3) the Property was reviewed confirming all listing information was complete and accurate; and
- 4) the same standards and cost manual was applied to all properties taxed in Town.

The board's inspector reviewed the assessment-record card, reviewed 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 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 did not rely on the inspector's report.

#### Board Findings

Based on the evidence, the board finds the proper assessment to be \$104,550 for the following reasons:

- 1) The Taxpayer purchased the Property in February 1989 for

\$235,000. The Town's equalized value of \$232,000 was not supported by either

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the Taxpayers' appraisal or the market decline as indicated by the change in the equalization ratios for 1989 (39%), 1990 (44%) and 1991 (51%). The ratios indicated an 11.3% decline in the general level of assessment in the Town from 1989 to 1990 and a 13.6% decline from 1990 to 1991.

2) The board finds the Taxpayers appraisal to be supportive of the Property's value. The appraiser utilized three comparable sales all of which occurred within six months of the assessment date. While desirable to have comparables from the same town as the subject, there is no statute prohibiting use of out of town comparables as long as adequate adjustments are made, if warranted. The board finds the appraiser supported the adjustments made to the comparables.

3) The Town stated a recent sale in the subdivision supported their assessment. To the extent the Town relied on this sale, the board was unable to review the analysis since the assessment record card was not submitted and the Town did not supply sufficient data from which the board could review the comparable. Likewise, the sales analysis from previous years was of no value to the board because it contained no information regarding the type of property, nature of the sale, comparability to the subject, etc.

The standard for all appraisals is the "full and true value" of the parcel (RSA 75:1), which means its fair market value. Trustees of Phillips Exeter Academy v. Exeter, 92 N.H. 473 (1943). The board finds the fair market

value of the property as of April 1, 1991 is \$205,000 and an assessed value of \$104,550. The board has time adjusted the Taxpayer's appraisal by .5% per month to the date of assessment in arriving at this conclusion. In making a

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

If the taxes have been paid, the amount paid on the value in excess of \$104,550 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

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George Twigg, III, Chairman

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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 Herbert G. and Audrey Gustafsson, Taxpayers; and the Chairman, Selectmen of Sutton.

Dated: September 28, 1994

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Melanie J. Ekstrom, Deputy Clerk

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