

James O. and Joan D. Bridges

v.

Town of Sutton

Docket No.: 10999-91-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$148,500 (land, \$32,150; building \$116,350) on 2.258 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) it was increased \$1,700 when no improvements were made;
 - 2) an insurance appraisal dated April 1989 appraised the dwelling at \$246,000;
- and

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3) an appraisal dated August 1991 estimated the market value to be \$252,000.

The Taxpayers in their rebuttal stated:

- 1) the Town erred in stating the deck was added on in 1989, as it was built at the time the home was completed in 1986;
- 2) the Town erred when stating the building value was approximately the same as the insurance appraisal when applying the equalization ratio; and
- 3) the Town's sale is not comparable, as it has more acreage, a view, more square feet, does not have electric heat, and was on the market for three years.

The Town argued the assessment was proper because:

- 1) the property record card indicates a 14 x 30 deck was constructed in 1989 which would account for the \$1,700 increase;
- 2) when applying the equalization ratio to the Town's building value, the value is approximately the same as the Taxpayers' insurance appraisal's replacement cost of \$270,600;
- 3) a recent sale within the same subdivision, having similar characteristics, sold for \$395,000. When applying the ratio of 51% to the assessment, it demonstrates the assessment is in line;
- 4) a sales analyses from previous years indicated property values were properly assessed;
- 5) the Property was reviewed confirming all listing information was complete and accurate; and

6) the same standards and cost manual was applied to all properties taxed in the 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 \$131,070 for the following reasons:

1) The board finds the Taxpayer's 1991 appraisal to be supportive of the Property's value. The appraiser utilized three comparable sales all of which occurred within four 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.

2) 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

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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 \$257,000 and an assessed value of \$131,070. The board has time adjusted the Taxpayers' appraisal by .5% per month to the date of assessment in arriving at this conclusion. 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 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 \$131,070 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

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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.

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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to James O. and Joan D. Bridges, Taxpayers; and the Chairman, Selectmen of Sutton.

Dated: September 28, 1994

Melanie J. Ekstrom, Deputy Clerk

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ORDER

In response to the Town's September 30, 1994 request for clarification, the board's September 28, 1994 decision stated that until the Town undergoes a general reassessment the 1991 ordered assessment should be used for subsequent years. Inasmuch as the Town was revalued in 1992, the board's ordered assessment would apply only for the year under appeal, 1991.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

Chairman

George Twigg, III,

Member

Michele E. LeBrun,

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to James O. and Joan D. Bridges, Taxpayers; and the Chairman, Selectmen of Sutton.

Dated: October 24, 1994

Valerie B.

Lanigan, Clerk
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