

Albert J. Bozogan

v.

Town of Sutton

Docket No.: 11008-91-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$121,300 (land, \$20,350; building, \$100,950) on 3.97 acres with building (the Property). The Taxpayer 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 Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- 1) the Property was purchased in October 1989 for \$210,000;
- 2) an appraisal dated August 1991 estimated the fair market value to be \$177,000;
- 3) comparables used in the appraisal demonstrate the assessment is too high;

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4) as a result of the culvert, it causes excess water on the Property, as the Town has diverted the water to run across the Property; and

5) the last revaluation was in 1981.

The Town argued the assessment was proper because:

1) a recent sale within the same subdivision as the Taxpayer, having similar characteristics, sold for \$395,000. After applying the ratio of 51% to this property's assessment, this demonstrated the assessment was 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;

4) the Taxpayer's argument regarding the culvert has been considered in the assessed value; and

5) 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 is 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 \$92,050 for the following reasons:

- 1) The Taxpayer purchased the Property in October 1989 for \$210,000.

The Town's equalized value of \$237,850 was not supported by either the Taxpayer's 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 a 11.3% decline in the general level of assessment from 1989 to 1990 and a 13.6% decline from 1990 to 1991.

- 2) The board finds the Taxpayer's appraisal to be supportive of the Property's value. The appraiser utilized three comparable sales, two in the Town of Sutton. 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 types of

property, nature of the sales, comparability to the subject, etc.

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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 \$180,500 and an assessed value of \$92,050. 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 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 \$92,050 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

George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Albert J. Bozogan, Taxpayer; and Chairman, Selectmen of Sutton.

Dated: September 28, 1994

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order relates to the "Taxpayer's" motion that the board of tax

and land appeals review the "Town's" computation of interest on the board ordered abatement of the 1991 taxes paid on an amount in excess of the revised valuation of \$92,050.00.

The board does not calculate the interest owed by a municipality. However, if the Taxpayer performs a calculation which differs from the Town's figures then we would review the Taxpayer's methodology.

Motion denied.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

Chairman

George Twigg, III,

Member

Michele E. LeBrun,

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Certification

I hereby certify that a copy of the foregoing order was mailed this date, postage prepaid, to ALbert J. Bozogan, Taxpayer; and Chairman, Selectmen of Sutton.

Dated: February 7, 1995

Lanigan, Clerk

Valerie B.

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