

Chaim Aron Kalman

v.

Town of Kingston

Docket No.: 11323-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$63,700 on a vacant, 3.93-acre lot (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The Town failed to file any written submittal and was defaulted. However, after review of evidence, the board determined a hearing was necessary to receive further evidence due to the divergence of the taxpayer's evidence and the assessment. 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 his burden of proof and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) an appraiser estimated a \$40,000 value as of April 1, 1991; and

(2) three comparable lots sold in 1991 for an average, \$38,500 selling price.

The Town argued the assessment was proper for the following reasons:

- (1) the Taxpayer's appraiser's adjustments contained errors and some of the comparable sales were not arms length sales; and
- (2) the lot was assessed comparably with other parcels in the area.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$49,200. This assessment is ordered because:

- (1) the evidence and testimony indicates the property has some topographical considerations and wet areas that need to be recognized in the adjustment factors of the assessment;
- (2) the condition factor on the primary site should be reduced from .80 to .60 to result in an assessment of \$49,200;
- (3) despite a finding that some of the Taxpayer's appraiser's sales are non-market transactions, the board finds a market value conclusion of approximately \$40,000 is reasonable given the topographical problems with the lot; and
- (4) a \$40,000 market value estimate when equalized by the Town's 1991 ratio of 121% indicates an assessed value of \$48,400 ($\$40,000 \times 1.21$) which supports the ordered assessment.

If the taxes have been paid, the amount paid on the value in excess of \$49,200 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 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

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Sumner F. Kalman, Esq., Attorney for Chaim Aron Kalman, Taxpayer; and Chairman, Selectmen of Kingston.

Dated: September 16, 1994

Valerie B. Lanigan, Clerk

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