

Chaim Aron and Gerda Kalman

v.

Town of Kingston

Docket No.: 11324-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

\$498,600 (land \$437,000; buildings \$61,600) on Lot 32, a 34-acre lot with a house at 15 Hunt Road; and

\$254,879 (land \$61,579; buildings \$193,300) on Lot 42, a 92-acre lot with a house at 8 Mill Road (90 acres assessed at current use rates and 2 acres assessed ad valorem) (the Properties).

The Taxpayers 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 abatements is granted.

The Taxpayers have the burden of showing the assessments were 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 of proof and proved disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) a November, 1992 appraisal estimated a \$151,000 value on Lot 32 and a \$164,294 value on Lot 42;
- (2) the Properties are wet and are located in four separate zones; and
- (3) the buildings need updating.

The Town argued the assessments are proper because:

- (1) both assessments were arrived at by using the same base values and methodologies as used for assessing other similar property;
- (2) the Taxpayers' appraisal is misleading, confusing and not properly developed according to proper appraisal procedures; and
- (3) the sales used by the Taxpayers' appraiser were either estate sales or bank or FDIC-related sales.

Subsequent to the hearing, the board instructed its appraiser to inspect and value both properties. The appraiser filed his report on June 30, 1994, and the board allowed the parties an opportunity to comment on the report. Neither party commented on the report and consequently the board deliberated and issues the following ruling.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be \$361,500 for Lot 32 and \$254,879 for Lot 42. The board orders these assessments because:

- (1) the board finds both the Town and the Taxpayers' evidence of market value lacking as to substantiation of the original base values in the case of the Town and the use of proper comparable sales on the part of the Taxpayers;

(2) the board, therefore, finds the best evidence before it to be its appraiser's report, which was based upon inspections of the property and an analysis of market data available to the appraiser; and

(3) the appraiser's conclusion of the proper assessment for Lot 42 is, while slightly higher than the assessed value, not significantly higher and therefore the Town's assessment is reasonable and proper.

If the taxes have been paid, the amount paid on the value in excess of \$616,459 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

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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 and Gerda Kalman, Taxpayers; and Chairman, Selectmen of Kingtson.

Dated: September 16, 1994

Valerie B. Lanigan, Clerk

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