

Douglas M. and Mary Ann Murphy

v.

Town of Candia

Docket No.: 11370-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$137,600 (land, \$45,700; building, \$91,900) on a house with 31.23 acres of which 29.23 acres are in current use (the Property). Two acres were assessed at \$44,600, as not in current use (NICU), and 29.23 acres were assessed \$1,100 in current use (CU). 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 denied.

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 failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

1) an appraisal dated April 30, 1991 estimated a fair market value to be \$142,900; and

2) the land assessment was too high considering the problems, i.e., swampy and unbuildable due to restrictions for preserving wetlands.

The Town argued the assessment was proper because:

- 1) it was reduced to address the consistent wet conditions;
- 2) the homesite value (200 x 200) remained the same because it was not affected by the wet conditions;
- 3) comparables, with similar conditions, indicated a market value difference of only \$400.00; and
- 4) as a result of the updated tax map, due to an error in the topography and building adjustments, the CU assessment change resulted in a net increase of \$2,950.

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.

Board Findings

Based on the evidence the board finds the Taxpayers did not prove disproportionality. The Taxpayers' \$142,900 appraisal fully supports the assessment. The appraisal appraised the Property with 5-acres. To compare

the assessment with the appraisal, the assessment must be adjusted to a 5-acre homesite. The board added \$4,725 for the additional 3-acres and subtracted \$1,100 for the CU land. The resulting value (\$141,225) was then divided by 1.04, the equalization ratio, yielding an equalized ad valorem assessment for the Property with a 5-acre homesite of \$135,790. Thus, the \$142,900 appraisal is more than the \$135,790 equalized ad valorem value for the home and a 5-acre site.

It appears the Taxpayers also argued the total ad valorem value for the land was excessive even though the Taxpayers' taxes were based on ad valorem and CU values. The board does not have jurisdiction over the Taxpayers' ad valorem assessment for land in current use because since the Taxpayers were not taxed upon full ad valorem values. Their taxes were based on a \$2,100 CU assessment and \$46,700 ad valorem for a total land assessment of \$48,800. The selectmen and this board can only abate taxes that were actually assessed to the taxpayer. RSA 76:16 states:
Selectmen or assessors for good cause shown, may abate any tax assessed by them or by their predecessors. Any person aggrieved by the assessment of a tax ... may ... apply in writing to the Selectmen or assessors for an abatement of the tax. (Emphasis added.)

The Taxpayers were never aggrieved by the ad valorem assessment on the current-use land because they did not pay a tax based on the ad valorem assessment. See Barksdale v. Town of Epsom, 136 N.H. 511, 3 (December 23, 1992). Therefore, the board has no jurisdiction to hear the Taxpayers' appeal of the ad valorem assessment on the current-use land.

The Taxpayers claim that the Town erred in calculating the CU assessment, is also not before the board since an appeal was not taken under RSA 79-A:9. If the Taxpayers think the current-use category should be changed, the Taxpayers must file a new current-use application with the Town.

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Douglas M. and Mary Ann Murphy, Taxpayers; and Chairman, Selectmen of Candia.

Dated: November 29, 1993

Melanie J. Ekstrom, Deputy Clerk