

Shirley and Rudolphe Daigle

v.

Town of Candia

Docket No.: 11371-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$114,450 (land, \$30,050; building, \$84,400) on a house with .60 acres (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 prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) in one year's time the land and building values increased over 2-3/4 to 4 times;
- 2) a neighboring property with more acreage was taxed only \$10,000 more;
- 3) a PSNH power line runs through the Property;

- 4) errors exist on the property-record card, i.e., dishwasher, fireplace, paved driveway;
- 5) the basement was wet during the spring and fall seasons; and
- 6) the well water had a high content of iron, therefore water must be bought, and the septic system needs to be updated.

The Town argued the assessment was proper because:

- 1) sales of nearby comparable properties, with proper adjustments, and having similar acreage indicated Taxpayers' assessment was proper;
- 2) property-record cards of neighboring properties indicated front-foot values compared with Taxpayers; and
- 3) upon an inspection in August of 1991, there was no evidence or discussion of a wet basement.

The board's inspector reviewed the assessment-record card, 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 adjusted 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's Finding

Based on the information provided, the board finds the proper

assessment should be \$110,640 (land, \$26,240; building, \$84,400). The board finds that the Town, after receiving the Taxpayers' concerns, made corrections

Page 3

Daigle v. Town of Candia

Docket No.: 11371-91PT

and adjustments to the assessment for most of the issues the Taxpayers raised.

However, the board concludes the Town's -5 adjustment for the PSNH easement was insufficient. The tax map, which showed the location of the easement, demonstrates that the easement encompasses most of the Taxpayers' frontage. The other properties affected by the easement, which the Town pointed out, were not as adversely affected since the easement was on the back of those lots and those lots were somewhat larger. In this case, the Taxpayers have a small lot, which is substantially encumbered by the easement. Therefore, the board concludes a -20% adjustment would be more appropriate.

No further adjustment is warranted because the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

To the extent the Taxpayers claim an inability to pay their taxes, the amount of property taxes paid by the Taxpayers were determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment

Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the

Page 4

Daigle v. Town of Candia  
Docket No. 11371-91PT

Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute). The board has included a copy of RSA 72:38-a. The board, by providing this copy, is not in any way indicating whether the Taxpayers are entitled to such a lien.

If the taxes have been paid, the amount paid on the value in excess of \$110,640 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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

Page 5  
Daigle v. Town of Candia  
Docket No. 11371-91PT

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Shirley and Rudolphe Daigle, Taxpayers; and Chairman, Selectmen of Candia.

Dated: December 9, 1993

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Melanie J. Ekstrom, Deputy Clerk

0009