

David J. Power, Jr. and Deborah K. Wilber

v.

Town of Candia

Docket No.: 12065-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$134,200 (land, \$41,150; building, \$93,050) on 32.38 acres, of which 31 acres is in current use (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 proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was purchased in December, 1990 for \$152,000;
- 2) there was no landscaping to the Property; and
- 3) the purchase price of \$152,000 reflected the market value.

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The Town argued the assessment was proper because:

- 1) a sale of undeveloped land, with similarities, was used to set the standards;
- 2) a comparable property in land and size indicated similarity in land values;
- 3) Taxpayers' purchase price was due to the previous owners being motivated to sell; and
- 4) the assessment was proportionate and appropriate.

Board's Finding

Based on the evidence, the board finds the ad valorem assessment should be \$152,000, which must be reduced, since some of the Property is in current use. Based on the Taxpayers' information, the assessment, ad valorem and current use, should be \$114,700. We instruct the Town to confirm that the Taxpayers' figure was correct.

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 municipality shall make this allocation in accordance with its assessing practices.)

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The board's decision is based on the Taxpayers' purchase price of the Property. (The board did not adjust the purchase price by the 1991 equalization ratio because the drop in value from December, 1990 to April, 1991 offset the need to increase the purchase price by the equalized ratio.) The Taxpayers stated the Property's purchase price was \$152,000 in December, 1990. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arms-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lake

Shore Estates, 130 N.H. 504, 508 (1988).

The Town did not submit anything to demonstrate the Taxpayers' purchase was anything other than a market sale as the Taxpayers indicated.

If the taxes have been paid, the amount paid on the value in excess of \$114,700 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

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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 David J. Power, Jr. and Deborah K. Wilber; Taxpayers; and Chairman, Selectmen of Candia.

Dated: November 11, 1993

Melanie J. Ekstrom, Deputy Clerk