

**Glendon E. and Dorothy T. Emery, Jr.**

**v.**

**Town of Candia**

**Docket No.: 12434-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$97,100 (land, \$43,350; building, \$53,750) on .99 acres (the Property). The Town recommended revising the assessment to \$93,150 (land \$43,350; building \$49,800) to correct the story height on the building. 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 only has a dug well and is located only on one-acre;
- 2) the house needs numerous improvements, i.e., siding, foundation;

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- 3) two to three acre lots are assessed lower; and
- 4) the land assessment is unreasonable and the lot would only sell for \$30,000.

The Town argued the revised assessment was proper because:

- 1) physical depreciation based on the Property's condition and age has been applied, which is in line with the depreciation applied to comparable properties; and
- 2) the land assessment is fair based on comparable properties.

#### Board Findings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed and further finds the Town properly revised the assessment to correct the story height on the main section of the dwelling. 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.

The Taxpayers stated that 2 to 3 acre lots were assessed lower than the subject but offered no supportive evidence. Further, differing square-foot assessment values are not necessarily probative evidence of inequitable

or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the

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yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

The Town submitted assessment cards and photos that indicated consistent methodology. Consistent analysis and methodology is some evidence of proportionality; see Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

If the taxes have been paid, the amount paid on the value in excess of \$93,150 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

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Glendon E. and Dorothy T. Emery, Jr., Taxpayers; and Chairman, Selectmen of Candia.

Dated: December 10, 1993

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Melanie J. Ekstrom, Deputy Clerk