

Alfred J. and Irene Guillette

v.

Town of Candia

Docket No.: 12855-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$161,150 (land \$53,050; building \$108,100) on a 3.30-acre lot with a house (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 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) the Property was purchased in July, 1989 for \$156,000;
- 2) two bank appraisals had much lower values than the assessment and property values have declined since then due to the market;
- 3) the house is unfinished; and

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4) the Property has excessive water due to a state culvert.

The Town argued the assessment was proper because:

1) an adjustment was made for the unfinished areas;

2) a topography adjustment was made to address the wet land due to the culvert;

3) the comparables used in the 1991 appraisal were sales that were priced to sell quickly and two were not located in the same town;

4) the comparables used in the 1993 appraisal were not located in the same town;

5) the 1991 and 1993 appraisals' cost approach (the method utilized by the Town) supports the assessed value;

6) sales and comparables indicated the Property was proportionately assessed;  
and

7) the Taxpayers failed to prove their assessment was not proper.

#### Board Findings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The Taxpayers submitted three appraisals to the board. The 1989 appraisal was too remote in time to be relied upon in establishing a 1992 value, so the board did not rely on that appraisal. The November, 1991 appraisal estimated the fair market value to be \$141,000. The Town challenged the arm's-length nature of comparable #1 and argued that comparables #2 and #3 should not be considered because they were out-of-town sales. While desirable to have comparables from the same town as the subject, there is no statute prohibiting use of out-of-town comparables,

as long as adequate adjustments are made, if warranted.

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The 1993 appraisal was for bank refinancing done one year later than the assessment date and gave no indication what time adjustments should be made to reflect an April, 1992 value.

Therefore, the board finds the November, 1991 appraisal to be the most probative evidence of market value as of April, 1992. However, adjustments would be required for the questionable arm's-length nature of comparable #1 and to time adjust the appraisal to the assessment date.

Neither party challenged the Department of Revenue Administration's equalization ratio of 116% for the 1992 tax year for the Town of Candia. The Property's equalized value is \$138,900 ( $\$161,500 \div 1.16$ ).

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). The board finds that the Taxpayers' 1991 appraisal supports the assessment.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with

specificity all of the reasons supporting the request. RSA 541:4; TAX  
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201.37(b). A reconsideration motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Irene and Alfred J. Guillette, Taxpayers; and Chairman, Selectmen of Candia.

Dated: January 12, 1995

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Melanie J. Ekstrom, Deputy Clerk