

Kevin Daverin

v.

Town of Candia

Docket No.: 16086-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$225,050 (land \$73,700; buildings \$151,350) on a 5.3-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property was purchased in January 1994 for \$124,500; and the home had been stripped of appliances and fixtures;

- (2) a January 1994 appraisal estimated the market value to be \$132,000;
- (3) part of the land is swampy;
- (4) comparable sales and comparable assessments indicate the Property is overassessed; and
- (5) the market value as of April 1, 1995 was \$124,500.

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The Town stated the assessment-record card has been revised to reflect the depth adjustment for the lot as well as the utility of the detached garage and argued the revised assessment of \$216,950 was proper because:

- (1) the Property is very similar to the abutting property (George) in lot size and both dwellings are custom built homes and their similar assessments reflect these conditions;
- (2) the cost approach section of the Taxpayer's appraisal indicates a market value estimate consistent with the assessment; and
- (3) the Taxpayer's purchase of the Property was not an arm's-length transaction as the seller was a lending institution and may have been unusually motivated.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$215,950 (land \$67,900; building \$148,050) which indicates an estimated market value of \$178,500¹. The Taxpayer stated he purchased the Property in January

¹ In this municipality, the 1995 level of assessment was 121% as determined by the revenue department's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment is \$178,500 (\$215,950 assessment ÷ 1.21 equalization ratio). This equalized assessment should provide an approximation of market value.

1994 for \$124,500. While this is some evidence of the Property's market value, the board finds it is not conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). A review of the Property's history shows it was listed for sale in April 1991 for \$269,900, sold in December 1991 to The Money Store who sold the Property to the Taxpayer for \$124,500 in January 1994. The Town stated they did not consider the sale to the Taxpayer to be arm's-length because it was purchased from The Money Store. Further, the DRA excluded the sale from its assessment ratio study with a comment that it was a "bank sale". The Taxpayer stated the Property was only on the market for 3 months when he purchased it and stated he had heard the prior owner had died. However, the Property had been stripped of appliances, light fixtures, medicine cabinets, etc. All of these facts lead the board to believe that

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this sale was most likely a sale following foreclosure of the Property. The board has consistently held that bank sales do not meet the requirements of arm's-length transactions because lending institutions are generally more motivated to liquidate their foreclosure portfolio than to hold and manage property for its maximum return. Such actions are not normal market motivations and generally disqualify those transactions as arm's-length. "An arm's-length transaction is '[a] transaction freely arrived at in the open market, unaffected by abnormal pressure or by the absence of normal competitive negotiation as might be true in the case of a transaction between related parties.'" B. BOYCE, REAL ESTATE APPRAISAL TERMINOLOGY 18 (REV. ED. 1984). Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). Therefore, the board finds this sale does not qualify as a market sale.

Regarding the Taxpayer's appraisal, the board has given it little weight for the following reasons.

1) The appraiser did not submit any data to support his adjustments with the exception of noting that his gross living area adjustment was \$20.00 per square foot.

2) No adjustment was made for the apartment over the garage.

3) The appraiser did not confirm the comparable sales with the buyer, seller or broker involved but merely referred to town records and the multiple listing service. Without confirmation of the sales, the board has no way of telling if the sales were arm's-length transactions.

4) The appraiser stated that his sales comparison approach was backed by his cost approach. His indicated value by the cost approach was \$194,716 yet his indicated value by the sales comparison approach was \$132,000, a 32 percent difference in value. It appears that the cost approach included a value for the garage apartment.

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The Taxpayer stated that comparable properties sold for significantly less than the Property's equalized value. The board has reviewed the sales evidence submitted and finds the following.

1) The August 1993 "George" sale for \$120,000 is not considered to be an arm's-length transaction for the reasons stated above regarding bank sales. This property was sold to the George's by the Federal Home Loan Mortgage Corporation. Further, the George assessment, when adjusted for differences

between the two homes, generally supports the Property's revised assessment.

2) The December 1995 "Galatis" sale would require substantial adjustments to compare it to the Taxpayer's Property. This property has less land area, less frontage, the house is smaller than the subject and does not have a garage where the Taxpayer's Property has two garages with an apartment over one garage.

The Taxpayer also argued that a portion of his land was wet. The Town stated that a X80 adjustment was made to the land value to account for the physical features of the land which also took into consideration the seasonal wetness. The board finds this adjustment to be reasonable based on the evidence presented.

The Town recommended revising the assessment to a value of \$216,950 to change the depth factor from 300 feet to 200 feet and also to give 20% functional depreciation due to size and utility of the 24 X 38 foot garage. Further, the Town assessed the Property for a dishwasher and based on the Taxpayer's assertion that there were no appliances, fixtures, medicine cabinets, etc., on the Property when it was purchased and as of April 1995, the board finds an adjustment of \$1,000 is reasonable. This adjustment applies only to the 1995 tax year because the Taxpayer stated these items were replaced subsequent to April 1995. Based on the equalization ratio of 121% for the 1995 tax year, this revised assessment would indicate a market value of \$178,500. The board finds these adjustments to be reasonable based on the evidence submitted.

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If the taxes have been paid, the amount paid on the value in excess of \$215,950 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996. 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.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kevin Daverin, Taxpayer; and Chairman, Selectmen of Candia.

Date: April 29, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" rehearing motion which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

The Taxpayer argued in his rehearing motion that the board considered "non-factual" information in denying the abatement. The board's decision was based on the evidence presented at the hearing. The board has thoroughly reviewed the evidence in consideration of the rehearing motion and will further elaborate its findings in this order.

The Taxpayer argued that he was unaware of and questioned where the board obtained the information that the Property was listed for sale for \$269,900. The assessment-record card (marked as Municipality Exhibit B) had a notation on it which read "For Sale \$269,900 4-1-91". Upon review of the documents filed by the Taxpayer with his appeal, the Taxpayer filed a copy of his assessment-record card with the same notation on it. The board agrees

that a listing is not a sale. The board's purpose was, as stated in the decision, merely to review the Property's history.

Neither the Taxpayer nor the Town presented sufficient information to the board regarding how The Money Store took possession of the Property (i.e., through foreclosure, through payment in lieu of foreclosure). However, the

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board does not consider the transfer to The Money Store to be an arm's-length, fair market sale and does not find the \$145,900 value pertinent for that reason. Market value is defined as "the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's-length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which the Property is adapted and for which it is capable of being used." Property Appraisal and Assessment Administration, p. 80. Banks are not in the business of buying and selling property, they are lending institutions. It is doubtful that the Popes (the prior owners) were willing sellers and doubtful that The Money Store was a willing buyer because they had a vested interest in the Property they held the mortgage on. Further, the Taxpayer testified that the Property was only on the market for 3 months which is an indication that The Money Store wanted to liquidate its holding.

For purposes of clarity, the board amends its decision on page 2, Board's Rulings, line 7 to replace the word "sold" to "transferred" (in December 1991 to The Money Store...). Again, as detailed on pages 2 and 3 of the board's decision, the board finds that the sale from The Money Store to the Taxpayer does not meet the litmus test of market value.

The Taxpayer continued to argue that the Property had a lesser value because of "the degradation of the building, specifically due to the lack of maintenance, and decay of the structure caused by natural elements and environmental effects." TAX 203.03 (g) states: Throughout the appeal, the Taxpayer shall be limited to the grounds stated in the Appeal Document. This argument was never raised in the Taxpayer's appeal nor was it considered by the Taxpayer's appraiser. Further, the Taxpayer submitted no photographic evidence to support this claim.

The board states on page 3 of its decision why it gave the Taxpayer's appraisal little weight. The board will attempt to be more specific.

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1) Rather than assigning a value for the apartment over the garage, the appraiser added the area to the gross living area of the house in spite of the fact that its only access was through the garage.

2) The appraisal was effective January 1994 and the comparable sales used by the appraiser were July and August 1993 sales, two years prior to the date of assessment. No evidence was submitted by the Taxpayer to show to what extent the market changed from 1993 to 1995.

3) The Taxpayer stated in his rehearing request that the appraiser had "adjusted accordingly" the comparable sales. However, neither the Taxpayer nor the board knows if the appraiser properly adjusted the sales because he provided no backup data to support his adjustments.

The Taxpayer further argued that the square footage encompassed by the center chimney should be removed from the gross living area. Towns typically

use exterior dimensions when measuring properties. The Taxpayer's own appraiser did not deduct the area encompassed by the chimney. Further, the George and Galatis comparables also have center chimneys. To reduce the Taxpayer's assessment would be inconsistent with how all other homes were measured and assessed in the Town. Further, the Taxpayer presented no evidence to support a reduction in value and the board finds no justification for reducing the Property's square footage.

Again, as stated in the decision, the board did not consider the George sale to be an arm's-length transaction because, like the subject, it was a purchase from a bank. The Taxpayer presented no valid evidence to show that this sale was a market sale. The board has explained in detail its reason for rejecting bank sales as being probative of market value. Further, the subject Property has an in-law apartment over the garage and also an additional 4-car garage (which the George property does not have) which, if the sale was an arm's-length transaction, would have to be adjusted to account for the differences.

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The Galatis property had significant differences from the subject Property as shown below.

	Galatis	Daverin
Lot Size	3.18 acres	5.30 acres
Frontage	239 feet	538 feet
Dwelling Size	1,728 sq. ft.	2,060 sq. ft.
Garage	None	Yes, with in-law apt.

Additional Features	None	4-stall garage
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The Taxpayer asked the board to determine the Property's value to be \$124,500. The Galatis property sold in December 1995 for \$121,900. To compare Galatis to the subject, upward adjustments would be required for all of the items above. The board's finding of an indicated market value of \$178,500 (\$215,950 assessed value ÷ 1.21 equalization ratio) is reasonable given the evidence submitted.

The board herein rules on the motion for rehearing but will not comment on the Taxpayer's May 24, 1997 letter because no additional evidence was requested by the board and the Taxpayer did not request additional time at the filing of the rehearing motion to submit additional evidence. This letter is being returned to the Taxpayer with this order.

Motion for rehearing denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kevin Daverin, Taxpayer; and Chairman, Selectmen of Candia.

Date: June 19, 1997

Valerie B. Lanigan, Clerk

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