

**Richard C. and Anne C. Papen**

**v.**

**Town of Sandwich**

**Docket No.: 17624-97PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$163,148 (land \$35,998; buildings \$127,150) on a single-family home on a 64.3-acre lot, with 61 acres of land in current use (LICU) and 3.3 acres of land not in current use (LNICU) (the "Property"). 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 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the land should be assessed as having an average view, not good as the view disappears once you enter the home site;

- (2) a 30% topography adjustment was eliminated when the Town updated the assessment in 1995; and
- (3) the April 1997 market value of the home plus 3.3 acres was approximately \$150,000.

The Town argued the assessment was proper because:

- (1) the Town was reassessed in 1978, indexed in 1983 and 1988 and then adjusted by .96 in 1995;
- (2) the abutting comparable property sold in June 1998 for \$290,000 and supports consistent assessing in the Town; and
- (3) the assessment represents market value.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$148,948 (LNICU, \$20,550 LICU \$1,248; buildings, \$127,150).

The board's finding is based both on evidence of market value submitted and on the Town's assessment methodology. The board shares the Town's concern that assessments of the LNICU portions of properties with current use should bear some semblance of market value. For the following reasons, the board finds the Town's assessment of the LNICU was not based on any documented market value evidence, and the board's calculation is derived from market value evidence and methodology submitted by the Town.

To understand the board's finding, a brief review of the Town's recent assessment history is appropriate. The Town was last completely revalued in 1978 by Eastern Appraisal Company, Inc. (Eastern). Both the Town and the Taxpayers stated that in 1983 and 1988 an indexing was

Page 3  
Papen v. Town of Sandwich  
Docket No.: 17624-97PT

performed to update the assessed values. A summary sheet of the lot pricing schedules and site improvements for 1988 was submitted as part of Taxpayers' Exhibit #2. The pricing schedule contains base values differing for size and for quality of views. The 1988 land values were

based upon the base prices and site improvements of that schedule. In 1995, the department of revenue administration (DRA) performed an update that, based on an analysis of sales, factored the 1988 assessed values by various neighborhood factors. For the Taxpayers' rural neighborhood the 1988 assessment was factored by .96. As a result, the 1997 assessment under appeal derives its lot and site improvement values from the 1988 indexing update further factored by approximately 4% in 1995.

The board reviewed the assessment-record cards submitted by the Taxpayers of properties in which no current-use assessment was involved and determined the lot base prices and site improvements related to assessments prior to 1988. No 1988 assessment-record card was submitted. However, based on the summary of assessed values for 1988 and the lot pricing schedule (part of Taxpayers' Exhibit 2), the board was able to calculate the lot assessments based on the quality of view, size of lot and type of site improvements. These calculations correspond to the 1988 assessments on all the properties submitted as comparables.

The Town testified the assessments as revised in 1995 were based on a market analysis and generally reflected market value. Further, the Town stated that the recent equalization ratios as calculated by DRA also support that the assessments generally approximate market value. The Town agreed that sales contained in DRA's equalization surveys do not usually contain sales of properties with current-use land because a comparison of those sales to assessments reduced

Page 4  
Papen v. Town of Sandwich  
Docket No.: 17624-97PT

by current use would not be indicative of the Town's level of assessment. As a result, because the equalization ratios derived from non-current-use sales are close to market value, the 1988 land pricing schedule (as indexed by DRA in 1995) is by inference related to market value. Consequently, the board finds this pricing schedule should be used as the basis for determining the assessed value of LNICU and not some other basis which the Town's representative did not know the origin of but asserted was more reflective of market value. While the Town's

representative and selectmen review of LNICU view factors in 1997 is commendable, the factor continued to be applied against a base value that is of unknown origin and not consistent with the base values of similar-sized lots not associated with current-use land.

Therefore, the board has calculated the Taxpayers' 3.3 acres of LNICU as follows:

Base value with average view	\$ 15,400	
Site improvements	<u>4,350</u>	
Land (sub-total)	\$ 19,750	
1995 DRA factor		<u>÷.96</u>
LNICU assessment	\$ 20,550	
LICU	<u>1,248</u>	
Total land assessment	\$ 21,798	
Building value	<u>\$127,150</u>	
Total assessment	<u>\$148,948</u>	

If the taxes have been paid, the amount paid on the value in excess of \$148,948 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 1998. Until the Town

Page 5  
 Papen v. Town of Sandwich  
 Docket No.: 17624-97PT

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Page 6  
Papen v. Town of Sandwich  
Docket No.: 17624-97PT

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Richard C. and Anne C. Papen, Taxpayers; and Chairman, Board of Selectmen of Rye.

Date: August 4, 1999

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Lynn M. Wheeler, Clerk

0006