

George R. and Lucinda J. Runde
v.
Town of Barrington

Docket No.: 8403-90 PX

Stanley R. and Frances A. Swier
v.
Town of Barrington

Docket No.: 8764-90 PX

Philip E. and Johanna Treadwell
v.
Town of Barrington

Docket No.: 8983-90 PX

Normand H. and Marianne C. Boucher
v.
Town of Barrington

Docket No.: 9621-90 PX

DECISION

The above appeals were consolidated for hearing. The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of the following:

#8403-90 PX: \$47,771 (land \$13,048; buildings \$34,723) on a 1.59-acre lot with a house

#8764-90 PX: \$42,329 (land \$10,667; buildings \$31,662) on a 1.65-acre lot with a house

#8983-90 PX: \$38,930 (land \$11,900; buildings \$27,030) on a 1.87-acre lot with a house

#9621-90 PX: \$45,518 (land \$15,003; buildings \$30,515) on a 1.89-acre lot with a house (the Properties).

For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing the assessments were 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.

The Taxpayers argued the assessments were excessive because:

- (1) the Properties continue to be stigmatized by being located in an official superfund site and the negative impact created by an eight foot high chain link fence with barbed wire surrounding the dilapidated and partially boarded up Johnson building. The fact that the EPA will continue to have clean up and monitoring activity on the site for the next 20 to 40 years has a direct bearing on its present value and marketability;
- (2) sales of properties in the superfund area are nonexistent and homeowners experience great difficulty in obtaining loans on the Properties for refinancing or property improvement;
- (3) in 1990, the real estate market experienced a severe downturn and the 15% depreciation ordered by the board in 1988 is low in 1990 and the depreciation should be further increased;
- (4) the Northwood sales utilized by the Town are not comparable because the properties were not in a superfund site, there was only one contaminant found

as opposed to 23 found on the superfund site and they do not suffer the visual impact as the subject Properties;

(5) test wells painted orange located on the adjacent subject properties serve as a constant reminder of the deadly hazard below;

(6) an additional 15% depreciation should be allowed to account for the offending building, land, fence, contamination, public perception as well as the depressed real estate market and the economy; and

(7) an update to the 1986 appraisal report by Randolph Daniels found a continued 30% diminution in value of the subject properties owing to the contamination present, its predicted duration and the falling real estate market.

The Town argued the assessment was proper because:

(1) sales of contaminated properties in Northwood indicate there is less market impact on properties than perceived;

(2) the Taxpayers presented no new evidence of market value since the 1988 appeal;

(3) there is inadequate support in the Taxpayers' appraisal to support many of the assumptions made; and

(4) the 15% depreciation allowed by the board in 1988 was appropriate and is appropriate for 1990.

Board's Rulings

The parties requested that the board take judicial notice of the prior evidence submitted in the 1988 appeals (#4139-88, #4288-88, #4500-88, and #4877-88) and the board's decision which found as follows:

Based on the evidence, including the board inspector's report, we find the assessments should be depreciated by 15% due to the economic influence of the proximity to the site and the unsightliness of the site itself.

The board has reviewed the 1988 files including the exhibits submitted and its May, 1991 decision along with the testimony and exhibits submitted in the instant cases and finds the assessments should be depreciated an additional 15% for the following reasons:

1) the superfund classification on a site with 23 identified contaminants creates a severe negative impact on public perception and the market which is exhibited by the lack of sales of property in the impacted area;

2) the visual negative impact of contamination site signs is compounded by the existence of the high, chain link and barbed wire fence around the condemned building which is an eyesore and an ever present reminder of the health risks assumed by all who live and play in the neighborhood;

3) the restricted marketability of the Properties located within the superfund site coupled with a severe downturn in the economy in 1990 causes these Properties to be less likely to sell in the 1990 market than the 1988 market given the fact that these Properties were competing with similar properties on the market, many offered at less than fair market value because of foreclosures, auctions and sales in lieu of foreclosure, etc.; and

4) the sales of contaminated properties in Northwood did not suffer the same degree of stigma associated with the subject Properties because the Northwood properties were not in a superfund site and did not have the visual stigma attached.

Based on the evidence and the board's experience, an additional 15% depreciation is appropriate. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George R. and Lucinda J. Runde, Stanley R. and Frances A. Swier, Philip E. and Johanna Treadwell and Normand H. and Marianne C. Boucher, Taxpayers; and Chairman, Selectmen of Barrington.

Dated: May 11, 1994