

Helen L. Johnson

v.

Town of Northwood

Docket Nos.: 9720-90PT & 11203-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of \$148,300 (land \$146,700; buildings \$1,600) on a 1-1/2 story dwelling on a 2-acre lot (the Property). For the reasons stated below, the appeals for abatement are granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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). While the Taxpayer may not have carried this burden, the inspector's report and the board's judgment supported an abatement.

The Taxpayer argued the assessments were excessive because:

- (1) the house has no value, is unusable, has rotted floors and has been boarded up, having been last occupied in 1954;
- (2) there is no water or sewer and it would cost in excess of \$15,000 for a septic system and \$5,000 for a water system;

- (3) the lot is overgrown and the frontage on the lake has large boulders and would require significant engineering costs and approvals required to get the Property to a lakefront lot;
- (4) the assessments were high compared to other assessments on Harvey Lake;
- (5) a sale of a 12.3-acre property (Ackman) one lot from the subject sold in June 1989 for \$65,000; and
- (6) a proper assessment of \$90,000 was requested for both years.

The Town argued the assessments were proper because:

- (1) the Taxpayer's comparables were not comparable because the comparables' frontages are all swampy and wet and the houses would have to be built on Harmony Road;
- (2) the Ackman property has little useable area, is wet and ledgy and the only dry area is near the road;
- (3) the Taxpayer's sales supported the Town's front-foot calculations;
- (4) the Taxpayer did not present any evidence to show that the lot cannot support a septic system and provided no evidence of actual costs;
- (5) comparable assessments and sales supported the Town's values;
- (6) the Property has year-round access from Harmony Road with an excellent view of the lake;
- (7) the house was assessed a salvage or shed value and has little to no value; and
- (6) the Taxpayer presented no conclusive evidence of the Property's market value.

After the hearing and preliminary deliberations the board asked its inspector to review this matter. The inspector visited the property, reviewed the property-assessment card, reviewed the parties' evidence and filed a report with the board, which was sent to the parties for comments. This report concluded the proper assessment for both years should be \$129,700 to \$132,300. (The board's previous inspector also reviewed the file but without the benefit of the parties' information. We did not rely on that report at all.) Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

After receiving the report and the Taxpayer's comments, the board decided to view the Property, which we did on August 3, 1995.

Board's Rulings

Based on the evidence, we find the correct assessment for both 1990 and 1991 should be \$116,700. The board struggled with this case because of the difficulty of obtaining and reviewing market data for 1990 and 1991 of vacant lot sales on Harvey Lake. The inspector's report was the best evidence on this point. The board, based on its judgment and view of the Property, concluded the inspector's lower figure should be adopted but with an additional 10% reduction due to the general poor market for vacant waterfront lots and due to the demolition costs ($\$129,700 \times .90 = \$116,700$). The lack of sufficient waterfront sales is evidence that the market had cooled for vacant lakefront lots. The assessments under appeal, however, were set when sales

were occurring for fair prices. Thus, some adjustment is required. See RSA 75:1 (assessments based on market value); RSA 75:9 (yearly assessment review and adjustment based on the market).

The Taxpayer's evidence does not support a further adjustment. The Taxpayer did not demonstrate what the Property's fair market value was. Additionally, the Taxpayer's information submitted in response to the inspector's report relied on 1992 and 1993 sales; this is a 1990 and 1991 appeal. The response also included some glaring errors. For example, page 2, full paragraph 2, the Taxpayer's agent concluded the analysis showed that "lake values have decreased in value an average of 2.67% since the 1989 revaluation ***." This is not correct even based on the agent's analysis, which arguably showed the assessment-to-sales ratio for the analyzed lake sales was 267%. Additionally, on the view, the board did not observe large boulders that hampered use of the Property's waterfront as the agent claimed at the hearing and in her response. The frontage had some rocks but not large boulders that affected usage. Such exaggerations go to the agent's credibility.

If the taxes have been paid for 1990 and 1991, the amount paid on the value in excess of \$116,700 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, 1993 and 1994. 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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Harriet E. Cady, representative for the Taxpayer; and James R. Martell, representative for the Town of Northwood.

Dated: August 11, 1995

Valerie B. Lanigan, Clerk

