

Estate of Wayne Graffam

v.

Town of Wakefield

Docket No.: 12790-92-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessments of:

\$105,900 (land, \$34,400; buildings, \$71,500) on Lot 6, a 6.6-acre lot with a house; and

\$52,600 on Lot 1, a vacant, 5-acre lot (the Properties).

The Taxpayer 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 abatements is denied.

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). We find the Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the Properties' assessments were excessive because:

- (1) the house on Lot 6 is 162 years old and has physical and layout problems, the furnace has not worked since 1992, and part of the basement has only dirt flooring;
- (2) the Properties are on a dirt road and receive no Town services;
- (3) Lot 1 was unimproved, yet had a higher assessment than a larger, improved lot across the street; and
- (4) an October 1992 appraisal estimated a \$76,000 value for the Properties.

The Town argued the assessments were proper because:

- (1) the Properties were assessed consistently with neighboring properties in per-acre price, rear-acre price, building-lot values, and depreciation factors;
- (2) most lots near the Properties were enrolled in current use, resulting in lower assessments; and
- (3) the Taxpayer enrolled the Properties in current use for tax year 1993.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove overassessment.

The Taxpayer has the burden to show what the Properties' fair market value was as of April 1, 1992. This value would then have been compared to the Properties' assessment and the general level of assessment in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986). The Taxpayer submitted an appraisal, which the board carefully reviewed. The

board, however, does not accept this appraisal as representative of the

Page 3

Graffam Estate v. Town of Wakefield

Docket No.: 12790-92-PT

Properties' market value. The board concludes the appraisal erred in assuming the highest and best use of the Properties was as one lot. Based on the evidence, the configuration, and the board's experience, the board concludes the Properties' highest and best use is as two separate economic units - - the lakefront unit and the non-lakefront unit. The board also concludes the interdependency between the two lots does not change this conclusion because the lots can, nonetheless, be separately sold and used.

The Taxpayer also argued the Properties lacked certain municipal services. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, see RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

We find the Taxpayer failed to prove the Properties' assessments were disproportional. We also find the Town supported the Properties' assessments.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 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

Page 4

Graffam Estate v. Town of Wakefield

Docket No.: 12790-92-PT

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

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 Harold E. Ekstrom, Esq., Attorney for the Estate of Wayne Graffam, Taxpayer; and the Chairman, Selectmen of Wakefield.

Dated: December 23, 1994

Lynn M. Wheeler, Deputy Clerk

0009

Estate of Wayne Graffam

v.

Town of Wakefield

Docket No.: 12790-92PT

ORDER

This order relates to the "Taxpayer's" rehearing motion. While the board erred in writing the decision, the board concludes it did not err in its ultimate decision. Therefore, the motion is denied.

Page 3, lines 4-7, incorrectly stated: "the lakefront unit and the non-lakefront unit. The board also concludes the interdependency between the two lots does not change this conclusion because the lots can, nonetheless, be separately sold and used."

This language is deleted. It was erroneously placed in the decision because the board reviewed a similar file on the same day as this appeal, and that other file was "lakefront property."

After again reviewing the file, we conclude, however, the board's decision was still correct. The board again does not accept the appraisal because its starting premise is that the property consists of only one parcel. We disagree, the property consists of two separate lots.

Page 2
Estate of Wayne Graffam v. Town of Wakefield
Docket No.: 12790-92PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing order was mailed this date, postage prepaid, to Harold E. Ekstrom, Esq., counsel for the taxpayer; and Chairman, Selectmen of Wakefield.

Dated: January 27, 1995

Valerie B. Lanigan, Clerk

0006