

Emile and Louise Fournier

v.

Town of Northwood

Docket No.: 13087-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessments of \$267,700 on "Lot 35" and \$106,400 on "Lots 72 and 72A" (the Property). The Town, however, recommended adjusting the assessments on Lots 72 and 72A to \$70,200. The Taxpayers 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 abatement is denied on Lot 35, but is granted to the Town's recommended assessments on Lots 72 and 72A.

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).

The Taxpayers argued the assessments were excessive because:

1) market data and assessment data were not consistent with data and values provided in the appraisal report;

- 2) Lots 72 and 72A are interdependent on each other and should have been assessed as a single lot; and
- 3) an appraisal prepared by P.A. Burnham estimated a September 30, 1991 fair market value of \$210,000 for Lots 35, 72 and 72A.

The Town argued the assessments were proper because:

- 1) the 1989 revaluation established front-foot values for properties on Northwood Lake and back lots;
- 2) a subsequent study conducted by Department of Revenue Administration (DRA) following the 1989 revaluation that indicated the revaluation was acceptable with good equity;
- 3) the Taxpayers' assessments were reduced following their application for an abatement;
- 4) due to the information received in Taxpayers' brief, the assessment for Lots 72 and 72A should be reduced to \$70,200 as the lots could not be sold separately;
- 5) Taxpayers' appraisal should not be considered as the sales used therein were not necessarily comparable and the appraisal lacked documentation of the adjustments made; and
- 6) the revised assessment of \$267,700 for Lot 35 and \$70,200 for Lots 72 and 72A are fair and equitable and further reductions are not warranted.

Board Findings

Based on the evidence, the board finds the Taxpayers failed to prove overassessment on Lot 35, but the board finds the Town's adjusted assessment on Lots 72 and 72A to be reasonable.

The Taxpayers' appeal rested upon the Burnham appraisal that estimated a \$210,000 value for Lot 35 and Lots 72 and 72A. The board concludes it cannot accept the \$210,000 figure for the following reasons.

1) The board disagrees with the appraisal's conclusion that the highest and best use of these parcels is as one unit. While it is true that the parcels have some integrated use, that integrated use is not so substantial that the parcels could not be separately sold. The board concludes that the highest return could be obtained if the parcels were sold separately, i.e., sell Lot 35 as one property and sell Lots 72 and 72A as another property.

2) In the comparable sales analysis, the appraisal did not provide adequate information about the comparables, e.g. the appraisal did not include any photographs, any square footage on the improvements or any information about the quality of the improvements. Additionally, the appraisal did not include a comparison grid in which the subject was compared to the comparables with the appropriate adjustments. Without this information, the board was unable to determine whether the resulting value was appropriate or not.

We also note that the appraisal's cost approach for Lot 35 was \$246,000. This figure did not include the cost of the water and septic. The assessment on Lot 35 was \$267,700, which when adjusted by the equalization ratio results in an equalized value of \$209,140. The board understands that the cost approach will often provide the upper value, but at least the cost approach here, especially considering the quality of the improvements on Lot 35, shows the assessment was not as out of line as suggested by the Taxpayers.

If the taxes have been paid, the amount paid on the value in excess of \$337,900 (Lot 35 \$267,700 plus Lots 72 and 72A \$70,200) 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 1993. 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 "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 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

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Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to E. Haffner Fournier, Taxpayers representative; and Chairman, Town of Northwood.

Dated: December 13, 1994

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order responds to the "Taxpayers'" rehearing motion, which is denied. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See 541:3.

The Taxpayers argued the board erred in concluding the highest and best use was as two separate properties. We reviewed the file and do not find the board's conclusion to be erroneous. Moreover, even if our conclusion was wrong on this issue, we would deny the appeal because the Taxpayers did not show overassessment.

The Taxpayers did not present any reliable or reviewable evidence of the property's fair market value. To carry their burden, the Taxpayers should have made a showing of the property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. We concluded in the

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decision and we conclude again that the Taxpayers' appraisal was not reliable or reviewable because: 1) it presented insufficient information about the comparables; and 2) it did not include any explanation about what adjustments were made to the comparables to arrive at the value estimates. Absent this crucial information, the board could not and cannot rely upon the appraisal.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

MacLellan, Esq., Member

Ignatius

Member

Michele E. LeBrun,

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to E. Haffner Fournier, taxpayers' representative; and the Chairman, Selectmen of Northwood.

Dated: January 27, 1995

Valerie B. Lanigan, Clerk