

G. Pearl Janusis

v.

Town of Northwood

Docket No.: 14330-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 adjusted assessment of \$347,500 (land, \$266,450; buildings, \$81,050) on 9.2 acres with two seasonal units on Jenness Pond Road (the Property). 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 abatement is granted.

The Taxpayer has the burden of showing the assessment was 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 carried this burden and proved disproportionality.

The Taxpayer's brief contained a substantial amount of detailed arguments to support his contention that the Property is overassessed. The board has reviewed all the material but will not reiterate all the arguments here. However in summary, the Taxpayer did argue the assessment was excessive

because:

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- 1) the Property underwent only routine upkeep and maintenance, yet the assessment increased drastically due to the 1989 revaluation;
- 2) the Property is only seasonal and lacks proper foundations and insulation;
- 3) the land value should be further reduced as it does not have a well and the land slopes causing problems which require repeated monitoring and maintenance;
- 4) an appraisal performed in March of 1992 estimated a market value of \$150,000;
- 5) a second appraisal estimated a fair market value of \$223,000 as of April 1, 1993; and
- 6) a reduction of the assessment to \$192,000 reflecting the equalized ratio of 128% would be an acceptable assessment.

The Town argued the assessment was proper because:

- 1) a subsequent sale study ratio indicated a C.O.D. of 6.97% demonstrating good equity existed;
- 2) a recent ratio study demonstrated a ratio of 128% and a C.O.D. of 9.04, again demonstrating the Town had maintained acceptable equity of assessments;
- 3) due to the Taxpayer's appeal, the Property was visited in March of 1994 and was adjusted to \$347,500; and
- 4) Taxpayer's adjusted assessment is fair when compared to all acceptable sales that had occurred.

BOARD FINDINGS

Based on the evidence, we find the proper assessment to be \$329,100 (land \$257,850; building \$71,250).

Neither party challenged the department of revenue administration's (DRA)

equalization ratio of 128% for the 1993 tax year for the Town of Northwood.

Applying this ratio to the Property's assessment indicates an equalized value

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\$271,500 ($\$347,500 \div 1.28$.) To meet her burden, the Taxpayer needed to make a showing of market value less than \$271,500. In this case the board finds that, through a review and analysis of all the evidence, the market value of the Property is approximately \$255,000 to \$260,000.

The board arrives at its conclusion of market value in two general fashions: 1) analyzing and revising the Taxpayer's appraisal; and 2) revising the assessment record card based on evidence submitted by both parties.

Taxpayer's Appraisal

First, the board finds the Taxpayer's 1993 appraisal did not adequately calculate and estimate the value of the 9.2 acre site of the Property. The appraiser multiplied \$200 per-front-foot times the 600 feet of frontage and added only \$1,000 for the additional acreage for a total land value estimate of \$121,100. The board finds this does not adequately recognize the contributory value of the additional land area not adjacent to the waterfront. Further in the appraiser's market approach, the adjustments for the site (when compared to the estimated site value in the cost approach) indicate site values for the comparables of \$13,000 to \$22,000, which greatly understates the site value of these waterfront comparables. Based on the sales submitted by the Taxpayer, the board estimates $\frac{1}{2}$ to $\frac{1}{4}$ acre waterfront sites in Northwood are worth approximately \$40,000 to \$50,000. Applying that estimate to the two sites that exist on the Property, using \$200 per-front-foot for the balance of the frontage and estimating a value of \$35,000 for the approximately 7 acres not

contained in the frontage calculation, the board concludes the site value of the Property to be approximately \$195,000. Adjusting the comparables in the Taxpayer's market approach based on a land estimate of \$195,000 provides an indicated market

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value of approximately \$260,000. Other inconsistencies the board considered (while not making specific adjustments for) in the Taxpayer's appraisal were the contributory value of the second home set at \$25,000 in the market approach versus a total improvement value in the cost approach of only \$46,322 and no adjustments for the comparables being on a seasonal road versus the subject being a year-round-town maintained road.

Further, the Taxpayer's appraiser submitted nine sales of properties, five of which were waterfront and four non-waterfront. The board reviewed the property-record cards submitted by the Taxpayer for these properties and also reviewed the DRA's ratio studies listings of sales to determine if the sales had been disqualified as not being representative of market value. Despite one sale being disqualified and despite some of the assessments listed by the appraiser as estimates, the board finds, in a general fashion, these sales tend to support the Taxpayer's argument that waterfront properties were overassessed. While the board does not draw a definitive conclusion from the limited data available, the sales raised a question that the board considered in analyzing the specific data relative to the Property.

Assessment-Record Cards

In reviewing the descriptive and photographic evidence, the board concludes the physical depreciation on the two dwellings should be increased from 20% to 30%. Further in reviewing the land calculations by the Town and

the revisions which resulted in the 1993 abatement, the board concludes that both the waterfront and the road frontage should receive a 70% factor for topography and the excess frontage factors should be based on the total of the two frontages. With the physical depreciation and the land adjustments the proper assessment is

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calculated to be \$329,100. This assessment equalized by the 1993 ratio provides an indicated market value of \$257,100 ($\$329,100 \div 1.28$).

Lastly, the board places no weight on the Taxpayer's estimate of \$150,000 because it was an undocumented opinion of value for probate or estate purposes.

If the taxes have been paid, the amount paid on the value in excess of \$329,100 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 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 "reconsideration 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 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. This, 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. 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Dennis P. Vachon, Taxpayer's representative; and Chairman, Board of Selectmen.

Dated: September 15, 1995

Clerk

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Melanie J. Ekstrom, Deputy