

Averka/Wright Corporation

v.

Town of Northwood

Docket No.: 16897-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$200,600 (land \$34,000; buildings \$166,600) on a 2.49-acre lot with a single-family house (the Property). 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased at foreclosure in 1994 for \$65,000;
- (2) the Property has recently sold for \$175,000 (\$150,000 for the real estate

and \$25,000 for goodwill);

(3) a July 1998 appraisal (for the subsequent sale) estimated the value to be \$176,000;

(4) an April 1994 appraisal estimated the value to be \$130,000; and

Page 2

Averka/Wright Corp. v. Northwood

Docket No.: 16897-96PT

(5) the barn is inexpensively built on slab and is being assessed as living space.

The Town inspected the Property, recommended revising the assessment to \$194,100 and argued the assessment was proper because:

(1) a comparable sale indicated the revised assessment was proper;

(2) the Taxpayer's appraisal is difficult to analyze because the comparable sales are of properties in other towns; the appraiser's gross living area adjustments are too low; and

(3) the sale price of the Property should be adjusted at least for a typical realtor commission.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$182,000. This assessment indicates a market value of \$185,700 (rounded).

Based on the testimony of both parties relative to the Property's physical condition, the assessment methodology including the antique barn space as part of living area and the corrections made by the Town after inspection, the board finds the total depreciation to be 52% (48% good). The depreciation is broken down as follows: normal - 31%; additional physical - 10%; functional (design/layout) - 8%; and unfinished areas - 3%. These depreciations result in the \$182,000 assessment.

The board gives some weight to the recent sale for \$175,000 but does not find it conclusive evidence of market value. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). The board has some concerns whether the sale price was the highest possible price the market would bear since the Taxpayer did not test the market by listing and advertising the Property. Also, because the sale was negotiated privately, the consideration did not include a real estate commission which is normally part of market value. The board gives negligible

Page 3
Averka/Wright Corp. v. Northwood
Docket No.: 16897-96PT

weight to the bank appraisal (Taxpayer's Ex. #1) largely because the appraiser was aware of the pending sale at \$175,000 (we do recognize, however, the appraiser noted it was a private sale and the purchase price had not been market tested).

The board gave no weight to the RJC & Associates appraisal for several reasons: 1) the preparer was not present to testify; 2) the appraisal was dated April 1994; and 3) adjustments made were not documented and minimally described.

The board also was unable to give much weight to the Hay Enterprises sale submitted by the Town because the details of the sales price (realty vs. non-realty) is subject to conjecture and income tax considerations.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$182,000 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1997. 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

Page 4
Averka/Wright Corp. v. Northwood
Docket No.: 16897-96PT

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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Averka/Wright Corporation, Taxpayer; and Chairman, Selectmen of Northwood.

Date: August 14, 1998

Valerie B. Lanigan, Clerk