

Whitney & Johnsen, Inc.

v.

Town of Sunapee

Docket No.: 17889-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of:

Map 2/Lot 33/Sublot 0000 - \$58,600 (land only), a 14-acre lot;
Map 2/Lot 33/Sublot 1002 - \$72,100 (land only), a 1.6-acre lot;
Map 2/Lot 33/Sublot 1502 - \$85,700 (land only), a 1.7-acre lot;
Map 2/Lot 33/Sublot 1504 - \$77,400 (land only), a 1.9-acre lot;
Map 2/Lot 33/Sublot 1506 - \$86,700 (land only), a 2.7-acre lot;
Map 2/Lot 33/Sublot 1604 - \$54,200 (land \$43,500; buildings \$10,700), a utility barn and shed on a 2-acre lot;
Map 2/Lot 33/Sublot 1701 - \$85,800 (land only), a 1.8-acre lot;
Map 2/Lot 33/Sublot 1707 - \$63,200 (land only), a 3.6-acre lot;
Map 2/Lot 33/Sublot 1708 - \$65,600 (land only), a 2-acre lot;
Map 2/Lot 33/Sublot 1709 - \$66,900 (land only), a 3.3-acre lot;
Map 2/Lot 33/Sublot 1801 - \$86,200 (land only), a 2.2-acre lot;
Map 2/Lot 33/Sublot 1803 - \$88,600 (land only), a 3.1-acre lot; and
Map 2/Lot 33/Sublot 1807 - \$85,900 (land only), a 1.9-acre lot

(the "Properties"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

- (1) a review of the comparable land-and-building sales at Oakledge and land-only sales indicates the lots are overassessed;
- (2) vacant land should be valued by the comparable sales approach rather than the land residual technique;
- (3) the service lot should have a higher deduction due to its location and unbuildability;
- (4) the state has denied septic approval for subplot 0000, therefore, the wetland areas have no value and the lot is unbuildable; and
- (5) the value of the vacant lots that are buildable should be \$65,000, the service lot should be \$25,000 and the wetlands should have no value.

The Town argued the assessments were proper because:

- (1) there was an improved sale in the Oakledge development that allowed the land residual technique to be used to estimate vacant land values; and
- (2) a consistent methodology was used to value the Properties.

Subsequent to the hearing, the board took a view of the Properties, the Brown Hill subdivision and the comparable sales in Oakledge.

Board's Rulings

Based on the evidence and the board's view, the board finds the proper assessments to be

Map 2/Lot 33/Sublot 0000 - \$35,600;
Map 2/Lot 33/Sublot 1002 - \$63,600;
Map 2/Lot 33/Sublot 1502 - \$70,700;
Map 2/Lot 33/Sublot 1504 - \$63,900;
Map 2/Lot 33/Sublot 1506 - \$71,700;
Map 2/Lot 33/Sublot 1604 - \$32,700
(land \$22,000; buildings \$10,700);
Map 2/Lot 33/Sublot 1701 - \$70,800;
Map 2/Lot 33/Sublot 1707 - \$52,500;
Map 2/Lot 33/Sublot 1708 - \$54,200;
Map 2/Lot 33/Sublot 1709 - \$55,500;
Map 2/Lot 33/Sublot 1801 - \$71,200;
Map 2/Lot 33/Sublot 1803 - \$73,600; and
Map 2/Lot 33/Sublot 1807 - \$70,900.

After the board took its view of the Properties, the comparable sales submitted by both parties and a general overview of the Oakledge development, it concluded, based on the evidence, the undeveloped base site value determined by the department of revenue administration (DRA) during the Town's 1998 reassessment should be revised to reflect a more accurate base site value of \$70,000. This base value was then adjusted to account for any excess rear land and any other factors such as the location of the lot and its physical characteristics.

For the majority of the Properties the board utilized the \$70,000 base site value and then applied the Town's adjustments as depicted on the assessment-record card to determine the new assessment. However, on two of the Properties, Map 2/Lot 33/Sublot 0000 and Map 2/Lot 33/Sublot 1604, the board has revised the adjustments as well as the base site value.

The DRA utilized the land residual technique to estimate site values in the Oakledge Development. While the land residual technique is a well-recognized method of estimating the contributory value of land from improved properties, it has produced a flawed result in this

instance. The DRA relied upon one sale identified as Lot 0002-0033-1704 as the basis for all site value determinations in this development. The accuracy of the land residual technique is dependant on a correct estimation of the value of the improvements. It is necessary to do a thorough inspection of the improvements to accurately estimate their contributory value. The Town testified that an interior inspection of the sale was not performed. The board finds the utilization of one sale, without an in-depth inspection of the sale property, resulted in an unsupportable base site value due to an inaccurate estimation of the contributory value of the improvements on the site. The DRA determined the improved site value was \$161,600 and then subsequently reduced this figure by approximately 20% to \$130,000 to be “conservative.” As the Taxpayer pointed out, and the Town did not refute, this resulting improved site value is illogical. One improved property in Oakledge sold in September 1998 for \$150,000 (Lot 14-9). If the board were to accept the DRA’s improved site value of \$130,000, it would mean the improvements on this September 1998 sale were only worth \$20,000. This extrapolation supports the Taxpayer’s premise that the site value is too high and the Town’s lack of knowledge of the costs of construction of the improvements is revealed in their conclusion.

The DRA testified it had considered other improved sales in the area but had determined they were not arm’s-length for various reasons including the extended marketing times and low selling prices attributed to some of the sales. The board finds the DRA’s reliance on one sale and the land residual technique to determine base site values is misplaced in this instance. Further, the fact that the one sale (Herbert) relied upon by the DRA had the highest sale price of any of the sales in Oakledge during the reassessment period makes reliance upon it questionable. The Town testified the replacement cost estimate of the improvements of the Herbert sale were

made through the use of the Marshall and Swift Residential Handbook.¹ However, the board finds the estimate unreliable inasmuch as the Town did not inspect the interior of the Herbert property and gave no reason for reducing the estimated improved site value by approximately 20% other than to be “conservative.” The Taxpayer testified, and the Town did not rebut, the Town’s estimated replacement cost for the improvements was much too low based on their knowledge of the construction costs of the Properties in Oakledge, having been the owners of the development and involved in the construction of over 90% of the dwellings. While the Town commented that it used the one Herbert sale because it had little confidence in the other sales that had taken place in Oakledge and had done the best it could with the information it thought reliable, the board finds their conclusion to be insufficient to support the appealed assessments.

The board finds sales in Oakledge were motivated by several factors that may not be at issue in typical residential transactions. Some of the Properties were listed on the market for a lengthy period of time and the owners were anxious to liquidate the properties in order to move on to some other real estate opportunity, and that most Oakledge properties are owned by seasonal/recreational owners who typically do not live in these properties year round. The market for this type of seasonal property shows varied ownership motivations in the transactions

¹ The board reviewed the Town’s replacement cost estimate of the improvements of the Herbert sale by checking the calculations with the Marshall and Swift Residential Handbook. While the Town’s estimate appears reasonable based on the board’s exterior view and the property-record card listing, it is quite possible the improvement’s contributory value could be more than estimated, thus reducing the indicated land residual value.

which would be different than the motivations of buyers interested in properties for a primary residence.

Further, there were some sales of unimproved lots, although having been sold in 1995 and 1996, that do give some indication of a benchmark lot value. No sales occurred of unimproved lots during 1997 or 1998 in the Oakledge development that would give a more timely reflection of market value. However, a number of sales occurred subsequent to the reassessment in the latter part of 1999 which indicated an escalation in lot value to approximately \$85,000-\$90,000. The sales from 1995 and 1996 indicated a range of values for unimproved lots of between \$60,000 and \$65,000 per lot. During its deliberations, the board reviewed and considered both the DRA's time adjustments to these sales and the Taxpayer's testimony. The board finds some truth in both. First, the board does not agree entirely with the Taxpayer's testimony that the market made no change from 1995 and 1996 to 1998 and then jumped in one-year period from \$65,000 to \$85,000-\$90,000. However, neither does the board agree with the DRA that the time adjustments are necessarily of a straight-line nature. The board received testimony as it has in other seasonal, waterfront-related appeals, that the market increased significantly in 1998 and has grown at significant annual rates subsequent to that point in time, whereas before then, the market appreciation was more conservative. The board has found an unimproved base site value of \$70,000 as of April 1, 1998, is an accurate estimation of the lot's market value prior to adjustments. Therefore, the board has recalculated the assessments to include a \$70,000 base site value and applied the adjustments the Town utilized on the assessment-record cards for excess or rear land to estimate the revised assessments of the Properties.

While in most instances, the board simply replaced the base site value used by the Town with the revised base site value of \$70,000 and then used the Town's adjustments on the assessment-record cards, the board did, on two of the Properties, revise the Town's adjustments as well. Those Properties are Map 2/Lot 33/Sublot 0000 and Map 2/Lot 33/Sublot 1604. On Map 2/Lot 33/Sublot 0000 the board revised the physical adjustment to .40 to reflect the uncertainty of the lot's buildability. This lot may have substantial development questions due to wetlands and the board finds that until these questions are answered there is more risk, and therefore, less value in this Property. Additionally, the board revised an adjustment on Map 2/Lot 33/Sublot 1604, the service lot. While the board did not revise the portion of the assessment covering the building value, it did find it appropriate to adjust the "other" factor the Town applied from .5 to .3 to further reflect the less desirable nature of this lot, its proximity to the main highway and the lack of amenities enjoyed by other lots in Oakledge such as view potential.

If the taxes have been paid, the amount paid on the values in excess of those listed above 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 City shall also refund any overpayment for 1999. 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

Concurred, unavailable for signature
Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Whitney & Johnsen, Inc., Taxpayer; and Chairman, Board of Selectmen of Sunapee.

Date: October 19, 2000

Lynn M. Wheeler, Clerk

Whitney & Johnsen, Inc.

v.

Town of Sunapee

Docket No.: 17889-98PT

ORDER

This order responds to the “Taxpayer’s” December 1, 2000 letter requesting information and clarification, which the board treats as a motion for clarification (“Motion”) and the “Town’s” December 19, 2000 response (“Response”) to the Motion.

The matter at issue is whether or not the Taxpayer is entitled to interest on the monies collected by the Town from its first semiannual tax billing if the Taxpayer receives an abatement from the board. In the instant case, the board finds the Town’s determination of when interest accrues to the Taxpayer is correct.

As the Town stated in its Response, taxes are not considered paid until all taxes, charges and interest due for the tax year are paid. This cannot be completed until after the final billing, usually in the fall of each tax year. RSA 76:15-a, II, states in part: “Partial payment of taxes assessed under this section shall be due and payable on July 1. The collector shall receive

such payments, give a receipt therefor, and credit the amount paid toward the amount of taxes eventually assessed against the property, in the same manner as prepayments under RSA 80:52-a.” The board concurs with the Town that, while there is one scenario where interest could be paid on the first billing of a semi-annual collection of taxes, it would only occur when it was determined the amount billed for the first half of the year’s taxes exceeded the total tax liability for the year. While this scenario is possible, it is unlikely and is not the case in this situation. As the Town indicated, RSA 76:17-a states that interest shall be paid from the date the taxes are paid until the date of refund and taxes are not considered paid until the final bill has been sent and full payment received.

The Taxpayer also questioned whether the Town’s plans to review the assessments in Oakledge was proper. The board reminds the Taxpayer that RSA 75:8 mandates that the assessors and selectmen shall review and revise any real estate that has changed in value and shall correct all errors they find. Therefore, for the assessors or selectmen to review and revise the assessments in Oakledge is not inappropriate, but rather merely a performance of their statutory obligation.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Whitney & Johnsen, Inc., Taxpayer; and Chairman, Board of Selectmen of Sunapee.

Date: February 1, 2001

Lynn M. Wheeler, Clerk

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