

**Mark and Linda Stevens**

**v.**

**Town of Lee**

**Docket Nos.: 22908-06PT/23478-07PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 and 2007 assessments of: \$517,900 (land \$210,800; buildings \$307,100) on Map 9/Lot 5-1100, a single family home on a 2.090 acre lot (the “Property”). For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property’s assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessments were excessive because:

- (1) an independent appraisal prepared by Vern J. Gardner, Jr. of Horizon Associates (the “Gardner Appraisal”) estimated the Property’s April 1, 2006 market value to be \$425,000;
- (2) the Property suffers from a negative influence from the adjoining horse farm because it produces a methane gas smell; and
- (3) the Property’s dwelling was built on a landfill containing buried construction materials and as it settles it has caused stress cracks in the building “suggesting unstable grounds”.

The Town argued the assessments were proper because:

- (1) the Property is located on Captain Parker Drive, one of the best subdivisions in the Town;
- (2) three comparable sales were analyzed which “demonstrate the fairness of the subject’s 2006 assessment” (see Municipality Exhibit A);
- (3) the Gardner Appraisal has some factual errors in the analysis of the comparable sales; and
- (4) the assessments are reasonable based on the comparable sales submitted.

The parties agreed the Town’s level of assessment was 100.0% for tax year 2006 and 103.7% for tax year 2007 as measured by the weighted mean ratio computed by the department of revenue administration.

Following the February 3, 2009 hearing, the board directed one of its staff review appraisers (Ms. Theresa M. Walker) to inspect and complete an independent valuation of the Property in the form of a written appraisal report. See RSA 71-B:14. On March 25, 2009, Ms. Walker filed her report (the “Report”). The parties were sent copies of the Report and were provided an opportunity to submit any written comments within twenty (20) days. Both parties submitted their responses within the allowed timeframe. The board’s consistent practice is to

treat the Report as one piece of the evidence giving it the weight it deserves. The board considers all other evidence admitted by the same standard.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$450,000 for tax year 2006 and \$466,700 for tax year 2007.

Assessments must be based on market value. See RSA 75:1. Based on the evidence submitted, the board finds the best evidence of the Property's market value to be the Report and its market value conclusion of \$450,000 for both years. In the Report, Ms. Walker researched seventeen (17) sales of single family properties and selected five to be compared to the Property utilizing the sales comparison approach. The five sales selected were analyzed and adjusted based on differences between the individual sales and the Property such as for: location, the age of the comparable sales, quality/condition, gross living area and the lack or presence of a garage. All of these adjustments were made subsequent to making an initial adjustment for market conditions (time). As stated in the Report on page 10, Ms. Walker considered comparable sales 2, 4 and 5 to be most similar to the Property based on the fact they had the least amount of net adjustments and determined the market value of the Property was \$450,000 on April 1, 2006 as well as April 1, 2007. The board finds the Report used acceptable appraisal methodologies and yielded an indication of market value that is well supported.

The Taxpayers submitted the Gardner Appraisal as evidence the Property was overassessed. The Gardner Appraisal estimated the Property's April 1, 2006 market value to be \$425,000, but did not address the 2007 tax year. Two of the comparable sales used in the Gardner Appraisal (#1 and #2) were also used in the Report as comparable sales #4 and #5, respectively. Both appraisers made adjustments to these comparable sales for dissimilarities

between them and the Property. As the Town noted during the hearing, Mr. Gardner used the wrong age for the Property when comparing it to the 40 Thurston Woods (his comparable sale #1) property resulting in an incorrect adjustment for that factor. While both appraisers utilized these two common comparable sales, they differed in the way some of the factors were adjusted and, therefore, arrived at different indications of value for the Property based on these common comparable sales. However, the board notes the indications of value determined for the Property by both appraisers based on the comparable sale located at 32 Captain Parker Drive, and directly across the street from the Property, were only \$5,000 apart. In the Report, Ms. Walker provided some comments on the Gardner Appraisal and wrote she considered the comparable sale used by Mr. Gardner located at 52 James Farm Road to be significantly different than the Property “due to its age (circa 1981), and its post and beam style construction.” Further, the Gardner Appraisal comparable sale located at 45 Hobbs Road was also considered significantly different than the Property because “it was a contemporary, post and beam colonial with only 2,258± SF of living Area.” Report at p.11. Thus, those sales were not included in the Report and the board finds the dissimilarities outlined make the final estimate of market value in the Gardner Appraisal to be less reliable than the market value conclusion contained in the Report.

At the hearing, the Town submitted a spreadsheet utilizing three (3) comparable sales which the Town indicated supported the assessment. See Municipality Exhibit A. One of the comparable sales located at 20 Caverno Drive was also utilized in the Report. However, in the Town’s analysis and also in the Report, this sale was given less weight due to the large amount of necessary adjustments for its date of sale, location and condition when comparing it to the Property. The 4 Depot Lane and 37 Thurston Drive comparable sales used by the Town were not used by either appraiser. The Town did not provide any discussion regarding how it selected the

comparable sales it used. Further, the Town did not choose the transfer of the property located at 32 Captain Parker Drive as one of its comparable sales. The fact this sale is directly across the street from the Property, was built by the same builder as the Property and was used by both appraisers makes it appear to be a good comparable sale to be used in any analysis involving the Property. For all these reasons, the board has given the Town's spreadsheet analysis little weight.

In its response to the Report, the Town contends the \$25 per square foot adjustment for gross living area used by both appraisers is too low. Just as determining assessments is not an exact science but is a matter of informed judgment and experienced opinion, See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979), estimating a property's market value through an appraisal requires some subjective decisions by an appraiser. The board frequently reviews appraisals similar to the ones submitted in this appeal and has seen a wide range of numbers applied by various appraisers to estimate the contributory value of differences in gross living area between the appraised property and the comparable sales. In this case, the Property has more than 3,000 square feet of gross living area. The board does not know definitively either appraiser's reasoning for choosing \$25 per square foot rather than some other number to account for the contributory value of the gross living area differences. The Town's assertion, however, that the value is "too low" is unsupported.

The Town disagreed with the quality differences Ms. Walker applied to comparable sales 1 and 3 and questioned their accuracy given the fact no interior inspections of these comparable sales were done. In the Report, Ms. Walker wrote she confirmed the data for each of the comparable sales she used with a party to the transaction. Report at p. 7. This is an accepted appraisal practice and is frequently the basis for "quality" or "condition" adjustments when no

interior inspections are performed. Additionally, Ms. Walker wrote she researched comparable sales on the Northern New England Real Estate Network (“NNEREN”) where interior photographs are sometimes available for properties listed for sale.

Therefore, the board finds the Report provides the best evidence of the Property’s market value which is \$450,000 and finds the Taxpayers are entitled to abatements to \$450,000 for tax year 2006 and \$466,700 for tax year 2007 [ $\$450,000 \times 103.7\% = \$466,700$  (rounded)].

During the hearing, the Taxpayers requested the board to order the Town to return any overpayment along with 12% interest as well as their legal and appraisal costs of more than \$1,000. The authority to award interest on any ordered abatement, whether made by the selectmen, the board or the superior court, is entirely statutory and is contained in RSA 76:17-a. The board, therefore, has no authority to grant the Taxpayers’ request for 12% interest on the ordered abatement. Further, the board denies the Taxpayers’ requests for costs for the following reasons. The board’s authority to assess costs is contained in two statutes: (1) RSA 76:17-b, which states, “(w)henever, after taxes have been paid, the board of tax and land appeals grants an abatement of taxes because of an incorrect tax assessment due to a clerical error, or a plain and clear error of fact, and not of interpretation, as determined by the board of tax and land appeals, the person receiving the abatement shall be reimbursed by the city or town treasurer for the filing fee paid under RSA 76:16-a, I.”; and (2) RSA 71-B:9, in part, which states, “(c)osts and attorney’s fees may be taxed as in the superior court.” Further, Tax 201.39 provides for the board to order costs if “the matter was frivolously brought, maintained or defended....” The Town presented testimony and evidence which supported the current assessment. Although the board determined the Town’s analysis was not the most probative evidence of the Property’s market value, we do not find the Town frivolously maintained or defended the appeal.

If the taxes have been paid, the amount paid on the value in excess of \$450,000 for tax year 2006 and \$466,700 for tax year 2007 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessments for subsequent years. RSA 76:17-c, I and II.

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(g). 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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark and Linda Stevens, 31 Captain Parker Drive, Lee, NH 03861, Taxpayers; and Chairman, Board of Selectmen, Town of Lee, 7 Mast Road, Lee, NH 03824.

Date: August 6, 2009

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Melanie J. Ekstrom, Deputy Clerk