

Harold E. Abbott

v.

Town of Gilford

Docket No. 5484-88

DECISION

The "Taxpayer" appeals the "Town's" 1988 assessment of \$630,400.00 (land \$158,200.00; buildings \$472,200.00) on a single-story automobile dealership with a 2.52 acre lot (the Property). Applying the 63% equalization ratio to the assessment results in an equalized value of \$1,000,643.00. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden to show 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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden.

The Taxpayer's arguments are presented in Taxpayer's exhibit 1-- "Assessment Evaluation." Therefore, we will not reiterate all of the Taxpayer's arguments. Suffice it to say the Taxpayer argued, using the comparable sales approach, the Property's equalized valuation was excessive, resulting in the Taxpayer paying a disproportionate amount of taxes. The Taxpayer's comparable sales data supported this assertion. Because this is a unique piece of Property in the Town, the Town was unable to substantiate the assessment using any comparables from Gilford. The Town, however, challenged the Taxpayer's arguments, especially the Taxpayer's reliance on comparables from municipalities other than the Town.

In deciding this appeal we note two principles that the board operates under. First, in deciding whether a taxpayer has carried his/her burden, by necessity we review the various valuations being presented by the parties.

Even though this is an important part of our analysis, the board is not obligated to

or empowered to establish a fair market value for an appealed property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine, using the parties' valuations, whether the appealed assessment has resulted in a taxpayer paying an unfair share of taxes. See Id.

Second, in reviewing and ultimately in deciding upon a proper assessment, the board, just like the municipalities and taxpayers, does not arrive at an assessment by way of a precise science. No, valuing properties is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 NH 919, 921 (1979). Finally, we note that in making this judgment, a value for the entire property, i.e., land and buildings, is determined. Because of the existing assessment process, however, this total value is then allocated between the land and buildings even though the market place does not view or value a property in such a way.

Based on the evidence, including a review of the Property as described to the board and the Taxpayer's comparables and applying the above-discussed principles, we find the proper assessment should be \$504,000.00, which results in an equalized valuation of \$800,000.00. We have not allocated this assessment between land and building because we have based our opinion on the Property's combined land and building value. The Town may allocate the assessment between land and building, using an allocation consistent with the Town's usual practice.

If taxes have been paid, the Taxpayer shall be refunded all taxes paid on the assessment in excess of \$504,000.00 with interest at six percent from the date paid until the refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue, Member

Paul B. Franklin, Member

Ignatius MacLellan, Member

Date: January 9, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Gerry Prud'Homme, representative for Harold E. Abbott, taxpayer; and Chairman, Selectmen of Gilford.

Michele E. LeBrun, Clerk

Date: January 9, 1991

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