

Laconia Savings Bank

v.

Town of Gilford

Docket No. 5504-88

DECISION

The "Taxpayer" appeals the 1988 assessment of \$1,168,800 (land, \$260,700; building, \$908,100) on a 24,550-square-foot steel building (known as the "Lakes Region Bowling Center"), with a 5.64-acre lot fronting on Gilford East Drive and Route 11 (the Property). Applying the 63 percent equalization ratio to the assessment results in an equalized value of \$1,855,238. The Town indicated that the Taxpayer also owned, but did not appeal, an unimproved parcel on Gilford East Drive assessed at \$55,050.

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

The Taxpayer argued:

1) that there was not the 75,000 to 100,000 population in the area to provide the customer base needed to economically support the property as a bowling center;

2) that Laconia Savings Bank quitclaim-deed acquisition of the Property in 1986 for \$950,000 only two years after the business was started supports this contention;

3) that the building was not easily converted to other uses; and

4) that the capitalization of the Bank's subsequent annual net lease income indicates the property's 1988 market value was \$676,700 and is further supported by two comparable sales, also part of the Taxpayer's assessment evaluation (Exhibit TP-1).

The "Town" argued:

1) that the Property, while accessed from Gilford East Drive, had excellent visibility from Route 11; and

2) that the Taxpayer's sales were not comparable, one having no commercial visibility and the other being a distressed sale.

In deciding this appeal we note two principles that the board operates under. First, in deciding whether a taxpayer has carried his or 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 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 Brickman v. City of Manchester, 119 N.H. 919, 921 (1979).

The board finds the Town's arguments persuasive that the comparable sales are tainted enough to be less than probative evidence. Further, the board finds the bank's lease does not represent the maximum income attainable

from the property but rather provides some interim income for the bank on what would otherwise be a non-producing loan.

The board does, however, find evidence that on a cost basis the property was overimproved relative to even its most optimistic income-producing potential. Therefore, the board rules that the building and paving values should be reduced by 35 percent to result in a proper 1988 assessment of \$835,300 (land \$245,050; buildings \$590,250).

If the taxes have been paid, the amount paid on the value in excess of \$835,300 is to be refunded with interest at six percent per annum from date of payment to date of refund.

January 18, 1991

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Gerry Prud'homme, representing the Taxpayer, and to the Chairman, Board of Selectmen, Town of Gilford.

January 18, 1991

Michele E. LeBrun, Clerk