

**John Zyla**

**v.**

**Town of Merrimack**

**Docket Nos.: 7778-89 and 9831-90**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$2,892,300 (land, \$1,058,000; buildings, \$1,892,300), on Map 5D-2, Lot 001, consisting of a warehouse with retail space on a 8.53-acre lot (the Property). The Taxpayer owns three other properties in the Town, and two of these properties abut the Property. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer argued the assessments were excessive because:

- (1) they exceeded the value estimated by the income approach, which the Taxpayer estimated to be \$1,872,800 (1989) and \$1,729,700 (1990);
- (2) the buildings are, at best, fair quality; and
- (3) the assessment should only include the realty value and not the business value.

The Town argued the assessments were proper because:

- (1) they were based on a market-derived income analysis and model use throughout the Town; and

John Zyla

v.

Town of Merrimack

Docket Nos.: 7778-89 and 9831-90

Page 2

(2) the warehouse rate was used for the entire building, including the retail space.

The Town also argued the Taxpayer's appeal should be denied because the Taxpayer failed to present any evidence concerning the assessments on the Taxpayer's other properties in the Town. The Taxpayer argued it would be too burdensome to require taxpayers to review and present evidence concerning all properties. The Town responded that for nonappealed properties a taxpayer only has to present some evidence concerning the nonappealed properties, but the Taxpayer does not have present the same extensive evidence required about the appealed property. The Town argued the Taxpayer did not present any evidence on the nonappealed properties, and the appeals therefore must be denied. The Taxpayer's expert admitted he had not reviewed the assessments on the nonappealed properties. Additionally, the Town argued the Taxpayer's failure was fatal because two of the Taxpayer's nonappealed properties are contiguous with the appealed property, and the board must consider the value of contiguous parcels when owned by the same taxpayer. The Town's assessor and expert, however, testified the other assessments were correct.

**Board's Rulings**

The board denies the appeals because the Taxpayer did not present any evidence concerning the assessments on the Taxpayer's other properties.

John Zyla

v.

Town of Merrimack

Docket Nos.: 7778-89 and 9831-90

Page 3

In determining the proper and proportional tax burden of any taxpayer, the board must "consider" all of the taxpayer's property in the municipality whether each property was appealed or not. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) Id.; see also Bemis Bro. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200 (1899). Clearly, the taxpayer has the burden to prove disproportionality of the assessment on the appealed property. Appeal of Town of Sunapee, 126 N.H. at 217. But does the taxpayer also have the burden to prove the taxpayer's other, nonappealed properties, were properly assessed? We think not. It is sufficient for the taxpayer to describe the nonappealed properties, to introduce the property-record cards on and to testify that after investigation the assessments on the nonappealed properties are correct. See Appeal of Town of Bow, Newington & Seabrook, 133 N.H. 194, 199 (1990). (Burden carried by showing overassessment within town only, not required to prove other towns were properly assessed.)

The Taxpayer did not present any evidence on the correctness of the assessments on the nonappealed properties. The Taxpayer's expert admitted he had not reviewed the nonappealed properties or the assessments thereon. Lacking any evidence to "consider," the appeal must be denied. The appeal is denied for two related reasons: 1) there was no evidence on the correctness of the total assessments on the Taxpayer's taxable estate (an assessment and

John Zyla

v.

Town of Merrimack

Docket Nos.: 7778-89 and 9831-90

Page 4

proportionality issue); and 2) there was no evidence of the Property's value considered together with the Taxpayer's two contiguous lots (a valuation issue).

The driving factor behind the board's conclusion is the contiguousness of the Taxpayer's properties. The board reviewed the valuation evidence, but we ultimately concluded that we could not arrive at a value for the Property without considering the Taxpayer's contiguous lots. Ownership of contiguous lots, especially in this location--frontage on both the F.E. Everett Turnpike and the D.W. Highway and frontage on William Street--is certainly a factor in determining the highest and best use of the parcels. See IAAO, Property Appraisal and Assessment Administration 31, 646 (discussing and defining highest and best use), 180-81 (discussing factors affecting land values), 656 (defining plottage). To ignore the Taxpayer's contiguous parcels would require turning a blind eye to reality and to sound valuation practice. As mandated by our duty, our eyes are wide open and our vision is clear.

In closing we note the Town admitted the nonappealed assessments were correct. This admission would normally foreclose the issue of whether a taxpayer's nonappealed properties were correctly assessed. Here, however, we have concluded a decision on value could not be made without considering the Taxpayer's two contiguous properties, an issue neither party addressed.

SO ORDERED.

John Zyla

v.

Town of Merrimack

Docket Nos.: 7778-89 and 9831-90

Page 5

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Member

---

Ignatatus MacLellan, Esq, Member

John Zyla

v.

Town of Merrimack

Docket Nos.: 7778-89 and 9831-90

Page 6

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Property Tax Research Company, Representative for the Taxpayer; and Office of the Assessor of Merrimack.

Dated:

\_\_\_\_\_  
Valerie B. Lanigan, Clerk

0008