

Helen Pynnenburg

v.

Town of Merrimack

Docket Nos.: 7792-89, 8375-90 and 11330-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989, 1990 and 1989 assessment of \$951,300 (land, \$846,000; buildings, \$105,300) and 1990 and 1991 assessments of \$949,300 (land, \$844,000; buildings, \$105,300) on a 9.4 acre lot with a gas station, car wash and apartments (the Property). The Taxpayer owns, but did not appeal, several other parcels in the Town of Merrimack. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessments were 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 failed to carry this burden.

The Taxpayer argued the assessments were excessive because:

(1) the land size is incorrectly recorded as 9.6 acres for the 1989 tax year resulting in a higher assessment;

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(2) the land value is high for the number of acres and quality of the land which borders the river and has a 20 foot wide sewer running through the Property;

(3) the Town's capitalization rate is too low;

(4) the Town made numerous errors in valuing the Property;

(5) 1990 commercial sales indicate that commercial values have fallen at a faster rate than the general assessments level in the Town; and

(6) the Property should be assessed at \$750,000 for 1989 and \$664,500 for 1990 and 1991.

The Town argued the assessments were proper because:

(1) the income approach was not relied upon;

(2) physical and functional depreciation was applied to the buildings and a further economic condition factor of 50 percent was applied for its economic misimprovement;

(3) the Property's highest and best use is as if vacant and the assessment equates to approximately \$100,000 per acre;

(4) two lots owned by the Taxpayer abutting the subject appeal (5D-3-119 and 5D-3-113) have been incorrectly assessed (more land than noted) and the assessment of the entire estate must be considered in determining if the

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Taxpayer has been overassessed; and

(5) the land sales support the assessment.

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Board's Rulings

We find the Taxpayer failed to prove the Property's assessments were disproportional for the following reasons:

(1) Based on information supplied by the Town, the income approach to value was not relied upon. The board finds that the highest and best use of the Property is as if vacant. The Property's access and exposure on U. S. Route 3 and its general commercial zoning supports the highest and best use. The existing improvements, although in poor condition, are income producing as a gas station, car wash and apartments. The board finds the Town made adequate adjustments in its cost approach to value by addressing the buildings physical and functional depreciation, age, and economic misimprovement.

(2) The Town's equalization ratios for 1990 and 1991 of 105 percent and 123 percent adequately address the decline in value of the Property for those tax years.

(3) The Taxpayer did not submit any evidence of other properties owned in Town but not appealed. In determining whether an assessment of one property is proper, the board must consider the assessments of other properties owned by the Taxpayer in the Town. Appeal of Town of Sunapee, 126 NH 214, 217 (1985).

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The Taxpayer stated that the Town corrected the lot size from 9.6 acres to 9.4 acres and reduced the land from \$846,000 to \$844,000 for the 1990 and 1991 tax years, but failed to make the correction for the 1989 tax year. The board believes that the assessment of \$844,000 is the correct land assessment for this parcel and rules that the proper 1989 assessment is \$949,300.

If the taxes have been paid, the amount paid on the value in excess of \$949,300 for 1989 shall be refundable with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Northeast Property Tax Consultants, Representative for the Taxpayer; Office of the Assessor of Merrimack; and Jay L. Hodes, Esq., Representative for the Town.

Dated: March 8, 1993

Valerie B. Lanigan, Clerk

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