

Joanna Oliver

v.

Town of Tilton

Docket No.: 10624-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 adjusted assessment of \$477,900 (land \$249,000; buildings \$228,900) on a .44-acre lot with two retail buildings and a billboard (the Property). 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 the assessment was excessive because:

- (1) an assessment analysis, performed by the Taxpayer's agent, Equitax, estimated the market value by the cost approach at \$275,000 and by the income approach at \$262,500; and
- (2) the rear portion of the lot is wet.

Joanna Oliver

v.

Town of Tilton

Docket No.: 10624-90PT

Page 2

The Town recommended at the hearing to reduce the assessment to \$350,000 and argued the adjusted assessment was proper because:

- (1) the Taxpayer's comparables were not in existence as of April 1, 1990 and were not properly time adjusted;
- (2) the land base value was derived from the sale in Oct. 1988 of the Tilton Motel Assoc. property for \$425,000;
- (3) the Taxpayer's size adjustment is a flat rate and not entirely reflective of the market;
- (4) the Taxpayer's two sales if adjusted for time at 1.5 % per month and properly adjusted for size, support the land portion of the assessment of \$249,000; and
- (5) Taxpayer's Property has been assessed within established parameters and guidelines when compared to comparables.

Board's Findings

Based on the evidence, the board finds the correct assessment to be \$350,000. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

Joanna Oliver

v.

Town of Tilton

Docket No.: 10624-90PT

Page 3

This assessment is ordered because:

- (1) the Town's recommendation corrected the errors in the building's story height, grade of construction and base square foot cost;
- (2) the Taxpayer's value estimate a) did not properly adjust the land sales for size or time, b) did not properly adjust the land sales relative to the grandfathered developed status of the Property, and c) placed excessive weight on the value effect of the wetlands; and
- (3) the good location, existing improvements and sales evidence submitted by both parties support an assessment of \$350,000.

If the taxes have been paid, the amount paid on the value in excess of \$350,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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 Equitax, Agent for Joanna Oliver, Taxpayer; and Chairman, Selectmen of Tilton.

Dated:

Valerie B. Lanigan, Clerk

Joanna Oliver

v.

Town of Tilton

Docket No.: 10624-90PT

Page 4

0008

Joanna Oliver

v.

Town of Tilton

Docket No.: 10624-90PT

ORDER

This order responds to the "Town's" September 3, 1993 request for rehearing and reconsideration of the "board's" decision dated August 17, 1993.

The request is denied for the following reasons:

(1) Both the Town and the "Taxpayer" waived a hearing and agreed to have the appeal decided by the board's expedited process which required the submission of briefs to the board. The Town's representative "Avitar" filed a brief on the Town's behalf.

Joanna Oliver

v.

Town of Tilton

Docket No.: 10624-90PT

Page 5

(2) The board, on its own motion, determined that a hearing on this matter was necessary and properly notified the Taxpayer's representative "Equitax", the Tilton Town Clerk and the Chairman, Board of Selectmen, Tilton. As is the board's policy, all notices are sent directly to the Town offices who have the responsibility of notifying their representative of any required filings, scheduled hearings, etc.

(3) The Town had the opportunity to attend the hearing but no one from the Town was present nor did the Town make any attempt to contact the board at any time prior to the hearing.

(4) The Town never withdrew Avitar's authority to act on its behalf. In fact, Avitar would not have been aware of the scheduled hearing unless the Town had notified them of the date.

(5) The Town does not offer to submit any evidence that existed but was unavailable at the time of hearing.

Request for rehearing and reconsideration is denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the foregoing order has been sent

Joanna Oliver

v.

Town of Tilton

Docket No.: 10624-90PT

Page 6

postage prepaid to Equitax, representative for the Taxpayer; Chairman, Board of Selectmen, Tilton; and Avitar Associates, representative for the Town.

Dated: October 21, 1993

0008

Valerie B. Lanigan, Clerk

Joanna Oliver

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Joanna Oliver

v.

Town of Tilton

Docket No.: 10624-90PT

Page 7

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BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

Joanna Oliver

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Town of Tilton

Docket No.: 10624-90PT

Page 8

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Dated: October 21, 1993

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Valerie B. Lanigan, Clerk