

Edward Silvia

v.

Town of Tilton

Docket No.: 10629-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$633,300 (land \$256,600; buildings \$376,700) on a six-acre lot consisting of a five-unit motel, a six-unit motel, and a house with three apartments (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, due to the complexity of the case, and in order to arrive at an appropriate decision, the board held a hearing on June 8, 1993. The board has reviewed the written submittals and the hearing testimony and issues the following decision.

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 and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property is located on the west side of Exit 20 which is an inferior

location to the east side;

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(2) the income approach to value was relied upon to arrive at a fair market value of \$356,000;

(3) the October, 1988 sale utilized by the Town is east of Exit 20 and highly visible from I-93 northbound (not just signage as the case for the subject property), and is a superior property to the subject;

(4) the April, 1988 sale (Velek) utilized by the town, located east of Exit 20, had seller financing involved and frontage on Lake Winnisquam with boat docks, therefore it is not comparable; and

(5) the Town has not adjusted its sales for time or location.

The Town argued the assessment was proper because:

(1) the Property was appraised in the same manner as all motels and cabins in the Town;

(2) the Property is located in a Business Zone within close proximity to Route 93 providing a good location to draw business from Route 3 and northbound traffic off Route 93;

(3) the site is visible from the I-93 northbound land and has a large billboard located at the rear of the Property;

(4) the Property had four acres with improvements on the market in 1989 and 1990 for \$485,000 with the owner keeping out 2 acres at a value range of \$100,000 to \$125,000; and

(5) a vacant land sale in October, 1988 for \$425,000 and an April, 1988 sale of a small motel unit with 4 houses for \$515,000 are indications of values in the area; and

(6) the income approach to value sets the low end of the range of value and

does not take into account the approval for 30 RV sites on the Property, or the fact that the town has no front foot requirements for subdivision of commercial lots.

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Board's Rulings

Based on the evidence, we find the correct assessment should be \$443,300.

This assessment is ordered for the following reasons:

(1) The Taxpayer's evidence that properties located to the easterly side of Exit 20 have a higher market appeal is supported by the fact that most of the commercial development is located east of the exit, by the Town's comparables and by the board's own knowledge and experience. "The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b)."

(2) The Town failed to submit any evidence to show how the market of the comparables related to the April 1, 1990 assessment date. Further, the Town failed to make any adjustments to the sales for location, water frontage or the effect of foreclosure on a property.

(3) The Town's assessment of the land value of the Super 8 site is indicative of its superior value. The Route 93 exposure to the Super 8 motel is far superior to the subject's limited view from the highway.

(4) The Town's assessment of the improved sale (Valek) reflects lower neighborhood and condition factors on a property with water frontage and conflicts with its assertion that the subject is assessed well within established parameters as determined by sales.

The board finds the Property warrants a 30% economic reduction to the value of the site and buildings. 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

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not allocated the value between land and building, and the municipality shall make this allocation in accordance with its assessing practices.)

If the taxes have been paid, the amount paid on the value in excess of \$443,300 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 Edward Silvia, Taxpayer; and Chairman, Selectmen of Tilton.

Dated: September 20, 1993

Valerie B. Lanigan, Clerk