

John J. McCarthy, Jr.

v.

Town of Merrimack

Docket Nos.: 8440-90 and 11331-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of \$529,600 (land, \$227,600; buildings, \$302,000) on a 1.261 acre lot with a commercial building (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) a December 17, 1990 appraisal by Joseph R. Gustitus of Able Appraising estimated the value of the Property to be \$250,000;
- (2) the Town's replacement cost is flawed;
- (3) the Town chose an inappropriate income value;
- (4) the Property has been listed for sale or lease since December, 1990;
- (5) commercial sales show that commercial values have fallen faster than the

general level of assessment in the Town; and

(6) the Property should be assessed for \$270,000.

The Town argued the assessments were proper because:

(1) inaccurate comparable sales data resulted in errors made by Able Appraising in arriving at its estimate of value;

(2) six sales in the Town were utilized in arriving at the land value;

(3) the income value assigned is reasonable based on the fact that the building has only 7,200 square feet;

(4) the Town's income approach resulting in a value indication of \$464,810, is a more appropriate approach to value than the cost approach relied upon for the assessment;

(5) a review of the properties on Star Drive does indicate land and buildings were assessed equitably using the same yardstick for proper application; and

(6) no information submitted either by the tax consultant or the submitted appraisal report would indicate inequity does exist.

Board's Rulings

Based on the evidence, we find the correct assessments for 1990 and 1991 should be \$270,000. These assessments are ordered because:

(1) The board found the highest and best use of the Property is its existing use as a distribution warehouse. The Property is located in the Star Industrial Park which is developed with similar industrial buildings utilized for warehousing and manufacturing and constructed of metal or masonry block.

(2) Based on the evidence submitted, the best indication of value is by the income approach.

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(3) There was no conclusive evidence to support a 1.5 upward adjustment to the income model or a total gross leasable rate of \$7.50 per square foot. Evidence submitted by both parties supports a net rental of \$4.15 per square foot. In 1989, the tenant was paying \$3.89 per square foot gross plus taxes above the 1988 base year. The land has been listed for sale/lease at \$3.75 per square foot triple net since December, 1990. And, the six warehouse rents used to determine the Town's income model ranged from \$3.00 per square foot triple net to \$5.50 per square foot triple net. The property leasing for \$5.50 per square foot is substantially larger than all of the other properties at 50,360 square feet. The other five properties ranged in size from 1,215 square feet to 25,400 square feet ranging from \$3.00 to \$4.30 per square foot triple net.

(4) Based on the evidence, the Town's vacancy rate of five percent and five percent expense for management, capital reserves and contingencies are reasonable.

(5) The Town's capitalization rate of ten percent is reasonable given the Property's easy access to Route 3 and the Daniel Webster Highway.

(6) Although the Property has easy access to the Daniel Webster Highway and Route 3, it lacks visibility, and the board was not convinced that industrial sites not on the Daniel Webster Highway had the same value as sales of sites on the Daniel Webster Highway.

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(7) The Town's 1991 equalization ratio of 123 percent adequately accounts for the Property's decline in value for that tax year.

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In summary, the value is calculated as follows:

Net Potential Income

7,200 square feet X \$4.15 per square foot	\$29,880
<u>Vacancy - 5%</u>	<u>x.95</u>
<u>Effective Net Income</u>	\$28,386
<u>Management, Capital Reserves and Contingencies - 5%</u>	<u>x.95</u>
<u>Net Operating Income</u>	\$26,967
<u>Capitalization Rate 10%</u>	<u>÷10%</u>
Market Value (rounded)	<u>\$270,000</u>

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.)

If the taxes have been paid, the amount paid on the value in excess of \$270,000 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

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, 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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