

**Beebe River Properties**

**v.**

**Town of Campton**

**Docket Nos.: 8716-90PT and 11501-91PT**

**DECISION**

The "Taxpayer"<sup>1</sup> appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 combined assessment of \$579,600 (land \$16,000; buildings \$563,600) on a 13.9-acre lot containing four mill buildings (the Property). Although the four buildings are on the same lot, the Town assessed each building and the land as separate parcels. 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden.

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<sup>1</sup> The original Taxpayer, Beebe River Properties, did not pay the 1990, 1991 or 1992 taxes and sold the Property to North Atlantic Distribution, Inc. The 1990 taxes were paid by First NH Bank, and the 1991 and 1992 taxes were paid by North Atlantic Distribution, Inc. Beebe River Properties assigned its appeal rights to First NH and North Atlantic. In this decision, the word "Taxpayer" shall refer to First NH and North Atlantic consistent with which party paid the taxes.

The Taxpayer argued the assessments were excessive because:

- (1) the equalized values exceeded the market values;
- (2) the proper market values were \$580,000 - \$590,000 (1990) and \$550,000 (1991);
- (3) a November, 1991 appraisal indicated a \$550,000 value;
- (4) when equalized, the assessments exceeded the value on comparables; and
- (5) the Property was subject to a 1991 lease with a \$580,000 purchase option.

The Taxpayer submitted several documents, which were reviewed, but will not be reiterated here.

The Taxpayer also presented Mr. Chase, the Property's current owner. He testified to the Property's condition in 1990 and 1991, including the defects and contaminants on the Property.

The Town argued the assessments were proper and the appeal should be denied because the Taxpayer did not meet its burden. The Town also detailed the problems it saw with the Taxpayer's appraisal, including the Town's concerns with the use of the discounted-cash-flow analysis (too many questionable assumptions, and the appraiser used below-market rent) and with the direct-sales approach (adjustments neither explained nor substantiated, quality of the sales, selection of \$7/sf, and use of rentable, not gross area). The Town admitted, however, some validity to the appraiser's numbers. The Town then submitted a reanalysis of the Taxpayer's evidence, which indicated higher numbers than the Taxpayer, but lower numbers than the assessments. The Town, however, continued to argue the Taxpayer did not carry its burden, and thus, the appeal should be denied.

The Town also testified the assessments were calculated in 1981, and there was little information that could be presented to the board to clarify or explain the original assessment calculations.

#### Board's Rulings

Based on the evidence, we find the correct assessments should be as follows.

1990 = \$230,000

1991 = \$272,600

These assessments were arrived at based on the following:

- 1) the value of the option to purchase;
- 2) the November, 1991 appraisal;
- 3) the Town's lack of data and analysis to support the assessments;
- 4) Mr. Chase's testimony about the lease, the option and the Property's condition;
- 5) the Property's sale and value history; and
- 6) the board's judgment that the Property was worth at most \$500,000 in 1990 and \$580,000 in 1991.

Arriving at a proper assessment is not a science, but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Finally, judgment is the touchstone of reaching a value conclusion.

After the hearing, there could be no doubt that the Property was overassessed. The equalized values -- \$1,449,000 (1990) and \$1,233,191 (1991) -- clearly exceeded any credible or supportable value determination. The Town, moreover, did not, and apparently, could not support the assessments or the equalized values. Thus, we were left with the Taxpayer's evidence, the Town's reanalysis and the board's judgment.

The most important evidence was the option value and the rent amount that were stated in the lease. Normally, options are not the best evidence, but here the option was the best presented evidence for several reasons:

1) there was a dearth of other market data; 2) Mr. Chase's testimony showed the option price was the Property's upper-limit value; and 3) the option price was consistent with the November, 1991 appraisal. The parties should not interpret our reliance on the option as a conclusion that the option represented some type of "fair-market" value price as defined by various appraisal and assessment books. Rather, the board is simply saying the option was the best evidence here that related to the give and take of the market, and it set the upper limit.

Mr. Chase's testimony and the Property's photographs showed this old mill complex had serious drawbacks, namely: 1) it had been unoccupied from 1987-1990 until Mr. Chase's company leased it in 1990; 2) some of the outlying buildings had no economic value and posed both fire and contamination (oil and asbestos) risks; 3) the electrical hookup had to be replaced; and 4) the heating system and sprinklers required extensive work. Mr. Chase testified his company spent substantial sums (approximately \$70,000) to address some of these issues. There is no way to know

factors, but one can be certain an informed prospective purchaser would have considered these problems. Because of these issues, the 1990 assessment was reduced to \$230,000 or a \$500,000 market value.

The board did not accept the Town's reanalysis because: 1) the Town did not support its market rent; and 2) the resulting values exceeded the other value evidence and the board's value judgment.

In conclusion, the board was left without any support for the assessment or the equalized value and, thus, the board decided this case based on the Taxpayer's evidence and the board's judgment. Frankly, even the ordered assessments may be too high, but they are certainly consistent with the evidence.

Subsequent to the hearing, the board received a motion to dismiss the appeal from the Town due to Beebe River Properties, Inc.'s (Beebe) lack of authorization of Property Tax Consultants (PTC) to represent Beebe at the hearing. The board denies the Town's motion because the Taxpayers submitted both a copy of Beebe's authorization of PTC's representation and an assignment of tax abatement rights from Beebe to Bank of Ireland First Holding, Inc. (Bank) (holding corporation for First NH Bank and Hilco) and to Vernon F. Chase of North Atlantic Distribution, Inc. (North Atlantic). PTC filed an appearance on September 1, 1994 on behalf of Bank and North Atlantic and, thus, had authorization pursuant to TAX 201.07 to represent Beebe and the Taxpayer.

If the taxes have been paid, the amount paid on the value in excess of \$230,000 and \$272,600, for 1990 and 1991 respectively, shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Page

Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I. (Note: See footnote 1 for the parties to be paid.)

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gary M. Stern of Property Tax Consultants, Agent for First NH Bank and North Atlantic Distribution, Inc., Taxpayer; and Chairman, Selectmen of Campton.

Dated: September 28, 1994

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Valerie B. Lanigan, Clerk

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