

Estate of Edward Schofield

v.

Town of Tilton

Docket No.: 11138-91PT

DECISION

The "Taxpayer" appeals pursuant to RSA 76:16-a, the following 1991 assessments.

Lot	Assessment	Description
Lot 20	\$109,400	One two-story building with office space on first floor and two apartments on the second floor
Lot 22	\$238,700	One two-story building with one storefront and four apartments
Lot 23	\$248,600	One three-story building with four apartments and two stores
Lot 24	\$144,800	One one-story, wood and cement block structure used as storefronts

The Taxpayer also owns, but did not appeal Map R9, Lot 47A.

The Taxpayer and the "Town" waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatements is granted except on Lot 22.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayer argued the assessment on Lot 20 was excessive because:

- 1) insufficient depreciation was given, no economic or physical depreciation was given;
- 2) the high vacancy rate;
- 3) the office area needs to be completely renovated;
- 4) the Property was up for sale for two years for \$75,000 with no results; and
- 5) there was no parking on the premises.

The Taxpayer argued the assessment on Lot 22 was excessive because:

- 1) the Property sold in May 1992 of \$180,000;
- 2) no economic or physical depreciation was given; and
- 3) there was no parking on the premises.

The Taxpayer argued the assessment on Lot 23 was excessive because:

- 1) the allowance for normal depreciation was too low, and no allowance was given for physical or economic depreciation;
- 2) the vacancy rate has been 75% over two years;
- 3) the difficulty in renting apartments on the third floor because of functional obsolescence, and the second floor apartments were vacant with a 25% chance of rental;
- 4) there was no parking on the premises;
- 5) the storefront has been vacant for two years; and
- 6) contacts were made regarding auctioning the Property with no success.

The Taxpayer argued the assessment on Lot 24 was excessive because:

- 1) no economic or physical depreciation was given;
- 2) the building had a 70% vacancy rate;
- 3) the Property did not have off-street parking; and
- 4) an appropriate assessment would be \$50,000 - \$100,000.

The Town argued the assessments were proper because:

- 1) a sales analysis for the 1990 reassessment revealed different values due to the Properties' location;
- 2) in establishing the criteria for assessing downtown, vacancy rates were considered and potential for growth and change were considered; and
- 3) there was ample parking in the area.

The Town also submitted a rebuttal brief to the Taxpayer's arguments, which will not be repeated here.

The board's inspector inspected the Property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. The inspector recommended denying any abatement on Lot 22 but adjusting the assessments on Lot 20, 23 and 24. The board sent this report to the parties. The Taxpayer claimed it did not receive the report. However, the Taxpayer later reviewed the report and responded. The Taxpayer questioned why the inspector did not review Map R9, Lot 47A. As stated earlier, this property was not appealed. The board provided the Town's response letter to the inspector, and he indicated that he did not change his value opinions based on the letter.

The board's prior inspector, Phillip Estes, also reviewed the file and provided a report. The board, however, has not relied on that report at all.

Board's Rulings

Based on the evidence, the board finds as follows:

- Lot 20 granted to \$94,400;
- Lot 22 denied, remains \$232,200;
- Lot 23 granted to \$213,300; and
- Lot 24 granted to \$119,800.

Given the limited number of good comparable sales for these Properties and the declining market, it is difficult to place values on these Properties. As is evident from the board's handling of this file, the board decided to send its inspector out to review the file, the sales and the Properties and to make a recommendation to the board. Given the divergence of the information submitted by the parties, the board finds the inspector's report to be the best evidence concerning the Properties' values. However, because the burden is on the Taxpayer and because of the difficulties with valuing these Properties in this market, the board has chosen the upper end of Mr. Bartlett's value range for the Properties that he recommended receive abatements. The bottom line is, we conclude Mr. Bartlett's report represents a fair and reasonable valuation of the Properties, and we adopt the upper range of those values as our decision.

Two final notes. First, while this appeal was pending Attorney William W. Franks filed two letters concerning a subsequent owner of one of the Properties. The board is sending Attorney Franks a copy of this decision

as a courtesy. Pursuant to the board's rules, appeal rights can only be transferred with a written assignment of appeal rights that must be filed with the board. TAX 201.12. No such transfer of appeal rights has been filed. The board does not treat deeds or purchase-and-sale agreements as a transfer document unless the appeal was specifically mentioned. Nonetheless, the board instructs the Town to issue the abatement checks in accordance with who paid the property taxes, including the taxes for subsequent years covered by RSA 76:17-c. Second, the board wishes to apologize to the extent its handling of this file contributed to the delay in getting a decision out. Some of the delay was caused by the type and number of Properties involved, and quite frankly, this appeal would have been more expeditiously handled through the normal hearing process. Additionally, at some point during the process, the file was put in a "tickle file" where it sat for substantially longer than was intended. The board apologizes for any delay.

If the taxes have been paid, the amount paid on the value in excess of the Taxpayer's total taxable estate (appealed and nonappealed properties) as revised by this decision shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1992, 1993, 1994 and 1995. 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.

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A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 in 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

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Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Willard Martin, executor for the Taxpayer; William W. Franks, Esq., courtesy copy; and Chairman, Selectmen of Tilton.

Date: May 22, 1996

Valerie B. Lanigan, Clerk

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