

1949 Corporation

v.

Town of Goffstown

Docket No.: 11509-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$803,400 (land \$317,800; buildings \$485,600) on a 1.03-acre lot with a retail store/office building (the Property). The Taxpayer owns, appealed, but settled the appeals on two other properties. 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).

The Taxpayer argued the assessment was excessive because:

- 1) a May 1992 appraisal estimated a \$365,000 value;
- 2) it exceeded the 1987 \$416,000 purchase price (with only one building) and the 1991 \$275,000 purchase price;
- 3) the Town's reliance on the Shop 'N Save sale was not correct because the Shop 'N Save property is far superior to the Property;

4) the buildings are perpendicular to the road, which decreases visibility and marketability; and

5) the assessment should have been between \$275,000-\$416,000.

The Town argued the assessment was proper because:

1) the 1987 sales price plus the cost of building 2 and 3 and paving and lighting would equal \$762,700;

2) the 1991 sale was not a market sale;

3) the Taxpayer's appraisal ignored the cost approach, the comparables were in other towns and bank sales without adjustments, the Town did not use the income approach but used the cost approach with market back-up;

4) the assessment was consistent with other assessments in the Town; and

5) it was supported by the Shop N' Save land sale.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$723,060. This assessment was calculated by reducing the Town's assessment by 10% based on the board's review of the evidence.

Let us begin by discussing the problems with the Taxpayer's evidence. First, its 1991 purchase cannot be considered as conclusive proof of the Property's market value. The purchase was not a qualified market-value sale; it was a distress sale. Specifically, the transaction involved reaching an agreement with HILCO and the owners for a deed in lieu of foreclosure. This transaction does not qualify as a market sale.

Second, the Crafts appraisal cannot be accepted for the following reasons:

- 1) overall quality of work was not sufficient and did not inspire confidence in the resulting number;
- 2) in both the income and the market approaches the appraiser used comparables from distant municipalities without any discussion of location adjustments (The use of these comparables also made the board question the quality of the research, which is the backbone of any appraisal.);
- 3) the income, expense and vacancy figures were not adequately documented; and
- 4) the use of bank sales in the market approach without adjustments was an error.

We also have problems accepting the Town's assessment for the following reasons:

- 1) the assessment was based on the cost approach when in a volatile and downturning market, the income approach is the more appropriate value indicator (We also note the Town has a duty under RSA 75:8 to yearly review the market and to adjust assessments as warranted by market information.);
- 2) the Property certainly was experiencing income problems, e.g., 60% vacancy; and
- 3) the Property has some physical attributes that warrant adjustment, specifically the orientation of the buildings to the road.

Based on the above, we have made a conservative 10% market adjustment to adjust the assessment for these issues.

If the taxes have been paid, the amount paid on the value in excess of \$723,060 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, the Town shall also refund any overpayment for 1992 and 1993. 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.

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

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Carol C. Hardy, Taxpayer; and Chairman, Selectmen of Goffstown.

Dated: August 12, 1994

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Valerie B. Lanigan, Clerk

Carol C. Hardy d/b/a "1949 Corporation"

v.

Town of Goffstown

Docket No.: 11509-91PT

ORDER

The Board of Tax and Land Appeals has received a motion for rehearing from the "Taxpayer" in the above captioned matter.

The board denies the motion as the Taxpayer failed to show that the board overlooked or misapprehended the facts or the law and such error affected the board's decision.

Rehearing motions under RSA 541:3 shall not be granted to consider evidence previously available to the moving party but not presented at the original hearing. TAX 201.37(e).

In denying this motion for rehearing, the board finds some reassurance that the board's original decision was reasonable and rational in light of the Taxpayer's closing statement in the motion for rehearing, which stated:

"While we believe this is still in excess of the value for 1991 and the current year, in this particular property, we feel this is a good compromise for both the town and us, bringing us closer to the true market value and more in line with other properties surrounding us."

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Carol C. Hardy, Taxpayer; and Chairman, Selectmen of Goffstown.

Dated: October 24, 1994

Valerie B. Lanigan, Clerk

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