

William F. and Edward Hutchinson

v.

Town of Milford

Docket No.: 12256-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$442,800 (land \$173,800; buildings \$269,000) on 10.96-acre lot containing 9 acres in current use and 1.96-acres not in current use with a house and self-storage buildings located near the intersection of Old Wilton Rd. and Rte. 101a (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) any alternative use of the parcel is limited to only 1.2 acres due to the large wetlands on the parcel, the 50 foot zoning setback requirement from wetlands and the existence of an easement on a portion of the Property;

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(2) there is no sewer to the lot and any new septic system would have to be located 100 feet from wetlands;

(3) the value on the buildings has been abated to a reasonable level but the assessment on the land is excessive relative to assessments of other properties with more developable land and in more visible locations;

(4) the second acre should be assessed at \$11,250 in line with other similarly assessed properties resulting in a proper assessment of \$404,060;

(5) the storage buildings' square footage is much too small to have on-site management facilities;

(6) the Town's occupancy and expense rates were based on larger storage operations and are not applicable to the smaller Property;

(7) the existing dwelling is located in the center of the remaining undeveloped land limiting the further development potential of the Property; and

(8) the site is not as visible as a nearby competitor and the traffic count submitted by the Town is inflated by a shopping area closer to the center of Milford; the actual traffic count by the Property is similar to the traffic count by the Chappell properties.

The Town argued the assessment was proper because:

(1) an estimate by the income approach indicates a 1993 value of \$328,633 which if equalized indicates an assessment of \$456,800;

(2) the Taxpayers' location is visible from the highly travelled Rte 101a;

(3) the comparable assessed properties submitted by the Taxpayers are not comparable due to various zoning restrictions limiting the development of those comparables;

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(4) the Property has the potential for several more storage buildings with the existing dwelling used as a management facility; and

(5) the site can also be accessed from a signalized intersection at Rte 101.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$420,250 (land \$151,250; buildings \$269,000). This assessment is ordered because:

(1) the Town incorrectly calculated the second .96 acre as having the same utility and development potential as the first acre site;

(2) the location of the existing dwelling impacts the development potential of the remaining undeveloped portion of the lot;

(3) significant areas of the developable portions of the parcel are impacted by either easements or zoning setback requirements;

(4) the parcel, while visible from Rte. 101a does not have the visibility and traffic count of a nearby competitor;

(5) the self-storage buildings comprise slightly less than 15,000 square feet which is small compared to business standards and causes the management and marketing of those units to be less efficient;

(6) a review of other commercially developed lots as submitted by the Taxpayers indicates the Town's methodology recognized either the actual developed or developable areas in the calculation of the prime sites and additional acreage; and

(7) to be consistent with the assessment methodology used for other properties and to reflect the various factors listed above (Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (the Town must consider all relevant factors in

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arriving at an assessment)), the .96 acre portion of the land valuation should have a condition factor of .50 resulting in a proper land assessment of \$151,250.

In defense of its assessment, the Town presented an estimate of value by the income approach. The board places little weight on that estimate because:

(1) the Taxpayers provided credible evidence that due to economies of scale and the Property's location and visibility, it cannot achieve the occupancy rate used by the Town which was derived from larger, better located self-storage property;

(2) while the Town is correct that occupancy rates generally should be drawn from the general market, the actual occupancy rates of the subject should be considered, especially if there are unique factors that affect the property, such as there is in this case; and

(3) the Taxpayers testified that collection difficulties and incentives to rent would also reduce the actual effective gross income to an amount lower than rates assumed by the Town.

If the taxes have been paid, the amount paid on the value in excess of \$420,250 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.

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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

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William F. and Edward Hutchinson, Taxpayers; and Chairman, Selectmen of Milford.

Dated: August 8, 1994

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Valerie B. Lanigan, Clerk