

John P. Beauregard

v.

Town of Marlborough

Docket No.: 12347-91PT

DECISION

The "Taxpayer" appeals pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$132,750 (land, \$24,000; building, \$108,750) on 3/4 +\ - acre lot containing an office/apartment building (the Property). The Taxpayer also owns, but did not appeal, two other lots with a combined, \$100,270 assessment.

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 abatement is denied.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

1) it was high when compared to other properties on the market;

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- 2) the Town's ratio study did not represent all properties for sale and sold in the Town;
- 3) it was assessed 51% higher than the highest property in the Town's ratio study;
- 4) the Property has an asking price of \$160,000, yet the only offer was for \$128,500;
- 5) a May, 1987 appraisal estimated a \$155,000 market value; and
- 6) a fair and equitable market value would be \$162,500.

The Town argued the assessment was proper because:

- 1) when applying the equalization ratio of 75%, it places a market value of \$177,000 not \$189,642 as indicated by Taxpayer;
- 2) the comparables used by Powers Appraisal were not adjusted for differences in location, condition of the buildings, or parking; and
- 3) the Property was in good condition, had considerable off-street parking, and room for expansion.

Board Findings

Based on the evidence, we find the Taxpayer failed to prove the Property was disproportional.

The board did not rely on the Taxpayer's appraisal because it was performed in 1987, not as of the date of assessment, April 1, 1991, and was based on the completion of an approved addition of two offices. The appraiser used three comparable sales to arrive at an indicated market value of the subject but made no adjustments to the sales for location, size and condition

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of the properties, lot sizes, availability of on-site parking, or other factors.

Having relied upon the appraisal report, the Taxpayer failed to provide any evidence of the Property's value as of the assessment date. The Taxpayer provided no evidence of the renovation costs to the Property. Further, the Taxpayer stated the Property was for sale, but failed to state what period of time it was placed on the market, if it was listed by a broker, if it had been properly advertised, or other relevant date.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John P. Beauregard, Taxpayer; and Chairman, Selectmen of Marlborough.

Dated: July 8, 1994

Melanie J. Ekstrom, Deputy Clerk