

Perras Home Center

v.

Town of Gorham

Docket No.: 12366-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$712,500 (land \$214,600; buildings \$497,900) on a 3.45-acre lot with a hardware store (the Property). 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 its burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the assessment increased nearly six fold at the time of the reassessment; and
- (2) the Property was not assessed comparably with other commercial property on Rte. 16.

The Town argued the assessment was proper because:

- (1) an assessment comparison analysis of other retail/warehousing structures indicated the Property was proportionately assessed; and
- (2) an estimate by the income approach indicated the Property was properly assessed.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$637,850 (land \$214,500; building \$423,350).

During the hearing, the board received conflicting evidence as to the physical description of the Property. Consequently, the board viewed the Property on July 29, 1994, to observe its physical aspects and the quality of the improvements. In general, the board finds the Town's description and dimensions to be correct. However, the Town's square-foot price of \$39.39 for the main building and \$16.42 for the lumber-storage building are excessive for their grade (quality). The board reviewed cost estimates utilizing the Marshall Valuation Service and performed a depreciated replacement cost estimate of the improvements using lower square-foot prices commensurate with the quality of the buildings (copy attached). The board finds the inexpensive building components were not adequately recognized by the Town and are a factor that would affect the Property's market value. (Paras v. City of Portsmouth, 115 N.H. 63, 67 - 68 (1975) (The Town must consider all relevant factors in determining an equitable assessment)).

No market evidence was submitted by either party relative to the land value. Therefore, the board finds no basis for an assessment on the land other than the land calculations contained on the assessment-record card.

If the taxes have been paid, the amount paid on the value in excess of \$637,850 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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Perras Home Center, Taxpayer; and Chairman, Selectmen of Gorham.

Dated: September 21, 1994
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Valerie B. Lanigan, Clerk