

Kateway, Inc.

v.

Town of Henniker

Docket No.: 12459-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$637,200 (land \$518,200; buildings \$119,000) on a 20.6-acre campground (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town. 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden and prove diproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) an appraisal estimated a \$425,000 April 1, 1991 value based on the income and sales comparison approaches and looking at a gross-rent multiplier;
- (2) an analysis of other campgrounds indicated the Property was assessed higher than other campgrounds (based on per-site equalized assessment for similar sized campgrounds); and

(3) the Taxpayer disagreed with the Town's analysis and explained those differences of opinion.

The Taxpayer also presented arguments which challenged the Town's evidence. The thrust of these arguments was that the Property could not generate enough income to support the assessed value. The Taxpayer also questioned whether the Town's comparables were reliable to value the Property given the large gross adjustments to the comparables.

The Town argued the assessment was proper because:

- (1) the assessment was supported by the Town's analysis (The Town presented an analysis report that concluded the Property had a \$663,000 value based on the market approach.); and
- (2) this Property is one of the best campgrounds in the nation (listed among the top three campgrounds in guide books); and
- (3) the Property generated a high amount of seasonal rent.

The Town disagreed with the Taxpayer's income analysis for the following reasons:

- a) the numbers of sites (assessment--136; Town at hearing--158; Taxpayer--157);
 - b) the actual number of seasonal leases, based on an on-site inventory, in 1991 and 1992 (Taxpayer--60; Town--84);
 - c) the occupancy rate (Taxpayer's report p.40--58%; Town's report p. 8--73%);
- and
- d) the effective gross income, some of the expenses, and the net operating income.

The Town also disagreed with the Taxpayer's sales approach, including the Taxpayer's failure to make adjustments for certain factors.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not show overassessment.

The following table is a summary of the value opinions.

SUMMARY OF VALUE OPINIONS

Equalized Value = \$606,900 (\$637,200 assessment ÷ 1.05 equalization ratio)

	<u>TOWN</u>	<u>TAXPAYER</u>
Income Approach	\$ 469,000	\$ 365,000
Sales Comparison Approach	\$ 663,000	\$ 425,000
Final Value Estimate	\$ 663,000	\$ 425,000

These values demonstrate a substantial variance between the value estimates based on the income approach and the value estimates based on the comparable sales approach. One of the biggest problems with the income approach is the lack of reliable income information because owners are reluctant to reveal such information. Therefore, it is difficult to determine how income relates to market value. Additionally, the board agrees with the Town's observation that prospective purchasers look at more than just the income stream even though the income stream is certainly a significant factor in the analysis. Another problem with

the income approach is finding an

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appropriate value for the owner's benefits such as lodging and an alternative way of life.

The sales approach, which based on the evidence appears to be the better approach, has problems of its own. Again, the lack of reliable income data is a detriment to arriving at a value estimate because income is certainly a factor to be reviewed. However, other factors are more easily known such as location, rents, and amenities. Moreover, many of these factors will be reflected in the rent that is charged.

The board spent considerable time analyzing the parties' evidence. But the burden is on the Taxpayer, and the board, therefore, spent more time analyzing the Taxpayer's evidence. The board concludes that evidence does not show overassessment. The main reason for this conclusion is the Taxpayer's resulting \$2,690 per-site value ($\$425,000 \div 158$ sites) was low compared to the parties' comparables. Attached to this decision is table 1, which is a summary of the per-site values presented to the board. This table demonstrates that the \$2,690 per-site value is low, especially when the Property is a superior campground that has been rated among the best in the state by two publications. Additionally, the resulting site value is woefully low considering the rent charged at the Property compared to the rents charged at the Taxpayer's comparables, the Property's amenities, including the pond frontage, and the Property's overall quality.

The board also questioned the Taxpayer's appraiser's methodology used in the sales comparison approach. The appraiser failed to make adequate adjustments for various attributes of the Property as compared to the comparables. Table 2,

attached to this decision, is the board's comparison
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grid of some of the factors that should have been considered. This table shows the Property enjoys the highest seasonal rent and the highest nightly rent. Additionally, the table shows the Property has a substantial percentage of 3-way and 2-way sites. The Property also enjoys pond frontage with a beach. Certainly, any sales comparison approach should have considered these factors, and the Taxpayer's appraiser did not.

The board also notes that the Taxpayer's appraiser's October 1993 \$515,000 appraisal raised at least the issue of whether the appraiser values property based on the purpose of the appraisal. In the tax-appeal appraisal, his value estimate was \$425,000. In the 1993 bank appraisal, the value was \$515,000. This 22% increase from 1991 to 1993 is in sharp contrast to the -5% drop in values shown by comparing the revenue department's equalization ratios for 1991, 1993 and 1994, which indicated a -5% decrease in values.

Finally, in addition to the Taxpayer not presenting a supportable claim of overassessment, the Town's analysis was certainly thorough and demonstrated the assessment was reasonable.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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 in law. Thus, new evidence and new arguments are only allowed in very limited

circumstances as
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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. 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

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John P. LeBrun, Esq., Counsel for Gateway, Inc., Taxpayer; Chairman, Selectmen of Henniker; and George W. Hildum.

Dated: January 5, 1996

Valerie B. Lanigan, Clerk

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TABLE 1

PER-SITE VALUES

Equalized Assessment = \$3,840

Taxpayer's Recommended Assessment = \$2,690 ($\$425,000 \div 158$)

Taxpayer's Unadjusted Comparables = \$2,950 - \$5,340 (\$4,200 median)

NOTE: Unadjusted except for time, excluding comp #3 because bank sale.

NOTE: If do not use comparable #1 due to high percentage of tent sites and comparable #3 due to bank sale, range is \$3,375 - \$5,071 with \$3,972 median.

Taxpayer's Adjusted Comparables = \$2,520 - \$5,071 (\$3,675 median)

NOTE: Taxpayer's adjusted, excluding comparable #3.

NOTE: If do not use comparable #1 due to high percentage of tent sites and comparable #3 due to bank sale, range is \$3,750 - \$5,340 with \$4,650 median.

Town's Unadjusted Comparables = \$2,800 - \$5,125 (\$3,790 median)

NOTE: Unadjusted except for time.

NOTE: If do not use comparable #1 due to high percentage of tent sites, range is \$3,390 - \$5,125 with \$4,235 median.

Town's Adjusted Comparables = \$3,858 - \$4,924 (\$4,841 median)

NOTE: If do not use comparable #1 due to high percentage of tent sites, range is \$3,858 - \$4,924 with \$4,885 median.

TABLE 2

TP's COMP #	SEASONAL RENT	NIGHTLY RENT	TOTAL SITES	% 3-W	% 2-W	% TENT	WATERFRONT
1	\$500-\$550 (10 SITES)	2W-3W \$13-15 TENT \$6-10	100	23%	10%	51%	NONE
2	N/A	3W \$17 2W \$15	120	0%	86%	14%	BROOK
3	\$750 (18 SITES)	3W \$18.75 2W \$14	133	75%	25%	0%	6-ACRE POND
4	\$1,025 (65 SITES)	3W \$22 2W \$19	74	95%	0%	0%	LAKE WITH BEACH
5	\$500 (5 SITES)	3W \$14 2W \$12.50	71	0%	*	*	BROOK AND RIVER
SUBJECT	\$1,445	3W \$24.50 TENT \$19	158	33%	63%	4%	POND WITH BEACH

*DATA NOT AVAILABLE - ERROR P. 59 (TOTAL 71 SITES BUT ONLY 31 + 30 ACCOUNTED FOR)

NOTE: "2W" = 2 way
"3W" = 3 way

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ORDER

This order relates to the "Taxpayer's" rehearing motion, which is denied. The motion fails to state any "good reason" or any error of law or fact for granting a rehearing. See RSA 541:3. Any other requests for action are also denied, including the Taxpayer's replication.

The Taxpayer raised several issues in the rehearing motion. The board's general analysis and conclusion are stated in the original decision. However, the rehearing motion raised three issues that warrant specific discussion:

- 1) the Taxpayer's assessment comparison;
- 2) the issue of the 1993 appraisal; and
- 3) the issue about whether the board had properly considered business value.

This order will discuss these issues.

The Taxpayer argued the board erred by not considering the assessment comparison information, i.e., the comparison of campground assessments throughout the state. The board looked at this information but concluded that information was irrelevant. Under RSA 75:1 the assessment standard is market value. See also Brock v. Farmington, 98 N.H. 275, 277 (1953). A comparison

of how other campgrounds in other municipalities were assessed does not reflect market value. Even if the comparison were valid, the board must consider all factors that affect market value, and the Taxpayer's assessment comparison was a broad-brush approach that did not consider how the "Property" compared to the other properties used in the analysis.

To resolve the issue concerning Taxpayer's appraiser's 1993 appraisal, the board rescinds paragraph 1 on page 5 in the decision. The board agrees that the 1993 appraisal included a consideration of business value, and therefore, the board erred by comparing that business-value appraisal with the 1991 real-estate appraisal. However, the board notes that its error was due, in part, to the confusion created in the 1993 appraisal.

1) The appraiser stated in the 1993 appraisal that he was valuing the fee simple rights of the Property as a going concern. This confused the board because fee simple is a term that should be used only to describe real estate rights and not business interests.

2) Additionally, the 1993 appraisal did not include any analysis concerning the business value (compare this to the 1991 appraisal, which included such analysis).

3) The 1993 appraisal calculated the value of the personalty (fixtures and equipment) separately from the \$515,000 fee simple value. This personalty value would then be added to the appraised value. However, in the 1991 appraisal, the appraiser subtracted the personalty value from the overall value estimate. This change in methodology confused the board.

4) Finally, we had concerns about the appraiser's work because, as discussed below, the Taxpayer's appraiser's per-site value was low given the per-site values shown in supplemental table 1 (attached).

The board's analysis in the decision did not correctly separate the business value in our per-site analysis. Therefore, we have corrected table 1 to include a deduction for business value. Based on the parties' information, the board selected a 15% business value. We assumed, even though it was not shown to the board, that each of the sales included 15% business value (business value being defined as personalty and other nonrealty interests). Even with this adjustment, the Taxpayer's recommended \$2,690 per-site value was low compared to the per-site values for realty only shown on supplemental table 1. All of the per-site values (PBASP/#) on supplemental table 1 are in excess of the Taxpayer's final per-site value.

The bottom line to the board's original decision and to this rehearing motion is that the Taxpayer failed to carry its burden to show overassessment. The board stepped back and looked at the big picture that was presented by the comparable sales and the parties' analysis of those sales. This analysis is shown in supplemental table 1. Given the Property's clear superiority, the Taxpayer's \$2,690 per-site value was low, and the Town's \$3,840 per-site equalized value was reasonable.

The decision addresses the other issues raised in the rehearing motion.

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 John P. LeBrun, Esq., Counsel for Gateway, Inc., Taxpayer; Chairman, Selectmen of Henniker; and George W. Hildum.

Date: Febraury 29, 1996

Valerie B. Lanigan, Clerk

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