

John R. Sarris

v.

Town of Hudson

Docket No.: 12665-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

\$97,800 (land \$49,100; buildings \$48,700) on Map 45 Lot 22, a .41-acre lot with a house located at "11 Riverview Avenue";

\$85,200 (land \$44,600; buildings \$40,600) on Map 45 Lot 21-1, a .23-acre lot with a house located at "14 Riverview Avenue";

\$171,400 (land \$92,500; buildings \$78,900) on Map 51 Lot 173, a .30-acre lot with an office located at "36 Library Street";

\$179,500 (land \$85,100; buildings \$94,400) on Map 51 Lot 24-1, a .23-acre lot with an office located at "37 Library Street";

\$195,200 (land \$93,300; buildings \$101,900) on Map 51 Lot 174, a .40-acre lot with an office/apartment building located at "38 Library Street";

\$193,800 (land \$88,800; buildings \$105,000) on Map 51 Lot 24, a .31-acre lot with an office located at "39 Library Street"; (the Properties).

The Taxpayer also owns, but did not appeal, four other lots in the Town with a combined, \$311,512 assessment. For the reasons stated below, the appeal for abatements is granted with the exception of the 14 Riverview Avenue property.

The Taxpayer has the burden of showing the assessments were

disproportionately high or unlawful, resulting in the Taxpayer paying an
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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 this burden and proved disproportionality.

11 Riverview Avenue

The Taxpayer argued the assessment was excessive because:

- (1) the property sold in October, 1992 for \$66,900;
- (2) prior to the sale, the home was rented for \$500 a month;
- (3) the home is a fiberglass, modular, star-shaped and the only similar sale found was a more conventional house in Nashua which sold by a bank; and
- (4) because the home is made of fiberglass, the wooden sills kept rotting out.

The Town recommended an adjustment to \$78,600 and argued this revised assessment was proper because:

- (1) an additional 26% depreciation should be applied to the house for its limited design/desirability in the New Hampshire market; and
- (2) the 1992 sale price when equalized would support the revised assessment.

14 Riverview Avenue

The Taxpayer argued the assessment was excessive because:

- (1) the property is near the Hudson Bridge and the ceilings don't meet code inside;
- (2) the property was fully rented (\$10,570 per year) but was running a negative cash flow of \$4,000 per year; and
- (3) an assessment of \$49,000 is more appropriate.

The Town argued the assessment was proper because:

- (1) the 1992 sale of 11 Riverview diagonally across the street indicates the assessment is in line;

- (2) the building is a two-family and was fully rented; and
- (3) the building was depreciated 31% for age and 15% for condition.

36 Library Street & 38 Library Street

The Taxpayer argued the assessments were excessive because:

- (1) the parking lot is shared and has a capacity of 21 cars;
- (2) the 36 Library Street lot is long and narrow, only 81 feet wide;
- (3) 36 Library Street is used as the Taxpayer's dental office and its only market would be for dentistry;
- (4) 38 Library Street is rented (income \$20,000 per year) - the first floor is a beauty parlor with a rooming house upstairs and the income could not support a cap rate of 10;
- (5) to maximize the value of the two properties, they would have to be sold together to capture the additional value one creates for the other;
- (6) as of April, 1991 the fair market value of 36 Library Street was \$85,000 and \$118,000 for 38 Library Street; and
- (7) in 1993, the Town was looking for additional property and a formal offer (for the assessed value) to sell was made to the Town for all Library Street buildings but the Town was not interested.

The Town argued the assessments were proper because;

- (1) if one of the properties was sold, the Taxpayer could control the easement and verbiage by deed;
- (2) there is sufficient land on both properties to increase the parking;
- (3) the properties are in a good neighborhood for professional business;
- (4) 36 Library Street was depreciated 31% to the building and an additional 5% for parking;

(5) 38 Library Street was depreciated 25% to the building and an additional 5% for parking;

(6) the buildings are in good condition and quite marketable; and

(7) when the properties were offered to the Town, the equalization ratio was 118% and the Town was looking for land for a police station.

37 Library Street & 39 Library Street

The Taxpayer argued the assessments were excessive because:

(1) the parking lot is shared and has a capacity of 11 cars which is inadequate;

(2) the Taxpayer tried to sell the properties in 1993 and could not find a bank to finance them;

(3) 39 Library Street is rented professional office space, all utilities are paid by the Taxpayer and 37 Library Street was rented to a hospital walk-in clinic 5 months in 1991;

(4) to maximize the value of the two properties, they would have to be sold together to capture the additional value one creates for the other;

(5) as of April, 1991 the fair market value of 37 Library Street was \$89,000 and \$119,000 for 39 Library Street; and

(6) the properties were running a negative cash flow.

The Town argued the assessments were proper because:

(1) the Taxpayer has two marketable properties with common access which would need to be resolved by deed when sold and the Town has applied a 5% adjustment to each property for parking;

(2) the land value assigned is still below market value for a 1-acre site and the lots would not receive permits to be built on today because of their sizes;

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(3) 37 Library Street was depreciated 5% to the building and 39 Library Street was depreciated 23% to the building in addition to the parking adjustment; and

(4) the Taxpayer has not provided a thorough rental analysis and the analysis presented appears to include all expenses in one year.

The board's inspector inspected the properties on January 11, 1995, reviewed the property-assessment cards, reviewed the exhibits filed at the hearing and filed a report with the board (copy enclosed). Copies of his written report were sent to both the Taxpayer and the Town for comment. His observations and recommendations have been incorporated in the board's decision. This report concluded the proper assessments should be:

11 Riverview Avenue	\$75,000 to \$83,000
14 Riverview Avenue	\$85,200
36 Library Street	\$162,700
38 Library Street	\$125,000 to \$155,000
37 Library Street	\$85,000 to \$140,000
39 Library Street	\$125,000 to \$160,000

Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, we find the correct assessments should be as follows:

11 Riverview Avenue	\$78,600 (land \$49,100; building \$29,500)
14 Riverview Avenue	No adjustment
36 Library Street	\$162,700 (land \$83,800; building \$78,900)
38 Library Street	\$156,900 (land \$84,100; building \$72,800)
37 Library Street	\$140,600 (land \$80,000; building \$80,200)
39 Library Street	\$160,200 (land \$76,700; building \$63,900)

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These assessments are ordered because:

11 Riverview Avenue

The board finds the Town's recommended additional depreciation of 26% for design/desirability is proper based on the evidence. Further, the October 1992 sales price (\$66,900) when adjusted by the 1992 ratio of 118% indicates assessed value of \$78,900.

14 Riverview Avenue

Based upon the evidence of income submitted by the Taxpayer, the board finds the assessment to be proper. The Taxpayer provided no evidence, nor did the board's review appraiser determine there was evidence to support a reduction in the assessment. The board reviewed the Town's cost approach and finds the depreciation applied to be appropriate on this property.

36 Library Street

Based on the evidence presented and the board inspector's report, the board finds a 10% adjustment for 36 and 38 Library Street's shared parking is appropriate. No further reductions are warranted because the Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. Further, the Property is owner occupied and the Taxpayer presented no market income to support his estimate of value.

38 Library Street

Based on the evidence presented, the information on the property record-card and the board inspector's report, the board finds an adjustment of 40% for age and condition and a 10% economic adjustment for parking is warranted for a depreciated building value of \$72,800. Further, a 10% adjustment is warranted to the land value for the Property's shared parking.

37 Library Street

The board concurs with its review appraiser's opinion that the replacement cost of the building is high when compared to 36 Library Street and an adjusted base rate of \$60.00 is more appropriate with a 3% functional obsolescence depreciation for the exterior access to the basement. Further, a 10% adjustment to the land for shared parking is appropriate.

39 Library Street

The board finds a 30% depreciation is warranted for the Property's age and an additional 5% economic obsolescence for shared parking and 5% functional obsolescence for layout. Further, a 10% adjustment to the land for shared parking is appropriate.

No further reductions are warranted to the Properties. The Taxpayer provided little evidence to the board to base a decision. The board considered all of the evidence presented in arriving at its decision but quite frankly, had the board not asked its review appraiser to inspect these Properties, the adjustments would not have been as significant as they are.

If the taxes have been paid, the amount paid on the values in excess of:

11 Riverview Avenue	\$78,600
36 Library Street	\$162,700
38 Library Street	\$156,900
37 Library Street	\$140,600
39 Library Street	\$160,200

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, 1993 and 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessments 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 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 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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John R. Sarris, Taxpayer; and Chairman, Selectmen of Hudson.

Dated: June 22, 1995

Valerie B. Lanigan, Clerk

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