

James J. McBriarty

v.

Town of Milford

Docket No.: 12799-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$262,900 (land, \$198,600; building, \$64,300) consisting of a three-family apartment building (the Property). 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 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 this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- 1) the Property was purchased in April, 1992 for \$90,000;
- 2) an appraisal dated February, 1993 estimated the fair market value to be \$120,000;

- 3) the land portion is overassessed as a large percentage is not useable or saleable in its present condition;
- 4) a property in the vicinity contains more square feet, yet is assessed lower; and
- 5) the Property is contaminated, but to what degree is still unknown.

The Town in its brief proposed reducing the assessment to \$223,100 (land \$158,800; building \$64,300) to account for the irregular shape and hilly topography of the lot. The Town argued the revised assessment was proper because:

- 1) the level of toxicity has not been determined and the Taxpayer has not been cited by the EPA as a potential responsible party in the clean-up;
- 2) Taxpayer's appraisal dated February, 1993 was not trended back to April 1, 1992 and the comparables were not similar to Taxpayer's Property;
- 3) comparable sales in the immediate neighborhood of Taxpayer's Property indicated a tight range in value; and
- 4) data supplied by the Taxpayer indicated none of the information on the contamination was known as of April 1, 1992 and the analysis of the known data collected by the EPA has not been completed, nor has any level of contamination been established; therefore, all arguable adverse effects, if any, should not be considered at this time.

The board's inspector inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. The report was sent out to the parties with additional time for the parties to comment. The report concluded a range of assessments to be from \$180,700 to \$201,550. The board has reviewed the report and treats the report

as it would other evidence, giving it the weight it deserves. In this case, the board gives Mr. Bartlett's report some weight but does not find it conclusive as to value.

Board Findings

Based on the evidence, we find the correct assessment should be \$203,300 (land \$139,000; buildings \$64,300). This assessment is ordered because:

1) the board concludes the highest and best use of the Property is as a three-family dwelling with the limited potential for commercial use; this determination is based on a description of the neighborhood submitted by the parties and Mr. Bartlett, the Town's three sales and the market data contained in the Taxpayer's appraisal;

2) the three sales submitted by the Town were in a superior commercial location and had condition factors in their land assessment in most cases of 400;

3) the listings contained in the Taxpayer's appraisal were in inferior locations relative to commercial conversion potential¹ and were listings, not sales (two of the listings were also bank owned); the Property's land value should have a condition factor of 280 to reflect a 30% reduction from the 400 condition factor which is more appropriate for superior commercial locations; the condition factor of 280 reflects both the physical

¹ The board obtained a copy of the permitted zoning uses for the "commercial-business district" (Property zone) and the "limited commercial business district" (comparable zone). The acceptable uses in the Property's zone are more inclusive and include uses normally associated with a commercial area.

constraints of the lot not only for its present use but for future commercial

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conversion and its inferior commercial location relative to the Town's comparables;

4) the assessed value of \$203,300 when equalized by the 1992 ratio of 1.39 provides an indicated market value of \$146,260; this market value estimate is reasonable based on the range of values found in Mr. Bartlett's report and the board's findings that the Property has some current value for present or future commercial conversion; and

5) the board finds, based on the evidence and Mr. Bartlett's report, that any contamination issues were not known as of April 1992 and thus would not have been a factor to be considered in determining the Property's market value as of that time.

If the taxes have been paid, the amount paid on the value in excess of \$203,300 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 1993 and 1994 subject to any good faith adjustments. 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 "reconsideration 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 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

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to James J. McBriarty, Taxpayer; and Chairman, Selectmen of Milford.

Dated:

Melanie J. Ekstrom, Deputy Clerk

James J. McBriarty

v.

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ORDER

Following the hearing, the board had its inspector review the Property. His report is included with this order. If the parties have any comment to the report, they shall file those comments within 20 days of the clerk's date below. When the 20 days has run, the board will issue the decision.

The parties are also advised to see if the report can be used to resolve this appeal through settlement.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

Lanigan, Clerk

Valerie B.

Certification

I hereby certify that the foregoing order has been mailed, postage prepaid to James J. McBriarty, Taxpayer; and the Chairman, Selectmen of Milford.

Date:

Lanigan, Clerk

Valerie B.