

Lloyd Matheson, Inc.

v.

Town of Charlestown

Docket No.: 12809-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$581,200 (land \$31,000; buildings \$550,200) on a .9-acre lot with a commercial building (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 his burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) an appraisal prepared by Kenneth Currier (Currier Appraisal) estimated the 1992 market value at \$240,000;
- (2) the appraisal was done for additional financing and the value conclusion was too low to allow the loan;
- (3) the Town's comparables are so different from the Property that they are not comparable; and

(4) 5,000 square feet of office space on the second floor became vacant in 1992 and remains so today.

The Town argued the assessment was proper because:

(1) the Currier Appraisal uses sales that do not meet the definition of market value transfers; the sales were mostly bank sales, foreclosure sales or auction sales;

(2) neither party could identify any sales that were really comparable to the Property; consequently, a comparison of the Property to other similarly assessed properties is the best manner of checking proportionality; and

(3) the Town's analysis of similarly used properties, which adjusted the assessment prices per-square-foot for the Property's size and age and condition, supports the assessment.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$517,100 (land \$31,000; buildings \$486,100).

This indeed is a unique and consequently difficult Property to value. The Property has a mix of uses - industrial, commercial and office. Different sections of the building were built at different times and with different building materials. Because of its uniqueness, it would be a difficult Property to value by any of the three approaches even if sufficient market data existed. However, in this case due to the economy and the general location, good comparable market data does not exist to arrive at a good estimate of value without significant adjustments or assumptions having to be made.

The board reviewed the evidence in two general fashions: 1) to see if a supportable estimate of market value could be determined; and 2) to see if the Town had considered all factors of the Property that would reasonably affect value.

Market Value Analysis

The board reviewed both the income and market approaches employed in the Currier Appraisal to estimate market value.

First, the board places no weight on the conclusion of value by the market approach because of its heavy reliance on sales that were bank owned or bank related. It has been said that "[t]he search for "fair market value is a snipe hunt carried on at midnight on a moonless landscape", Fusegni v. Portsmouth Housing Authority, 114 N.H. 207, 211 (1974) (citations omitted). This snipe hunt has been made more difficult by the occurrence of bank sales and bank related sales. Moreover, in valuing property, judgement is the touchstone. Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977). The Town is correct that bank sales are by definition not arm's-length transactions and require some adjustment because banks are not your typically motivated sellers. The board has also consistently seen both through its own studies and the studies of others, that bank sales typically sell for less than market sales. While a bank may accept an appraisal for lending purposes based on such bank sales (obviously to be conservative in their liability), the board finds that a value based on such sales does not reflect market value as required by RSA 75:1. Further, the only two non-bank sales used in either the retail analysis or the industrial analysis were very dissimilar to the Property. One was a small building in Charlestown with a relatively high

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sales price per-square-foot and the other property was an old five-

story brick industrial storage building in Claremont which due to its story height and age is not at all similar to the Property.

In short, the market data used in the Currier Appraisal to estimate value by the market approach is given little or no weight in determination of market value for assessing taxes because of the uniqueness of the Property and the paucity of truly comparable sales.

The board also reviewed the income approach and the rental and expense data contained in that approach. The Currier Appraisal analyzed the income information in two discounted-cash flow analyses, one with the current level of real estate taxes as an expense and the second with real estate taxes reduced based on a market value estimate of \$250,000. The board finds the Currier Appraisal's assumptions of rent and vacancy to be conservative and the indicated value of \$234,000 to be too low.¹

However, the board finds the income information supplied in the Currier Appraisal can be analyzed to provide some indication of market value. However, the estimate by the income approach is just that - an estimate. Because so many assumptions have to be made as to reasonable rental, vacancy and capitalization rates, the resulting estimate is debatable. Nonetheless, the board has attempted to get some general indication of market value by analyzing the Property by the income approach based on the following assumptions:

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- Retail space renting on a triple net basis of \$4.00 per-square-foot.

¹ The Currier appraisal concluded a market value of \$240,000 by correlating both approaches. Upon questioning, however, the Taxpayer indicated that he would not have sold the Property for that amount in 1992 largely due to the cost of moving his business and also due to the renovation costs of the Property.

- Office space renting at a triple net basis of \$6.00 per-square-foot.
- Industrial/warehouse space renting at a triple net basis of \$2.00 per-square-foot.
- Overall vacancy rate for all three areas of 20%
- 5% of effective gross income for management expenses, miscellaneous expenses at 2% and repairs at 3%.
- Capitalization rate of 11% and an effective tax rate of 3.8% providing a total capitalization rate of 14.8%.

Based on these assumptions, the indicated market value was \$482,000. Again, this estimate of value is not without some second guessing. However, it does provide a general indication of value that the board will use as a guide in the next section dealing with the various factors of the Property to be considered in its valuation.

Factors Affecting Value

The Town employed the cost approach during the reassessment in valuing the Property. This approach is commonly used by towns in the mass appraisal process. In arriving at a proper indication of market value by the cost approach for a property such as this, all the various factors affecting its market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). With the Property's mixed uses, varying building materials, age and location, the physical, functional and economic depreciation applied to the replacement cost must be considered carefully.

In reviewing the testimony and the evidence submitted, the board finds the following factors need to be considered in depreciating the Property's Page 6 Lloyd Matheson, Inc. v. Town of Charlestown
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replacement cost. (The following list is not exhaustive, and in many cases the Town

has considered some of these factors. However, the board finds that there are factors that the Town did not consider or adequately consider.)

- Property consists of various sections built at different times. The oldest section was constructed in the 1920s and 1930s with later additions in the 1980s.
- The industrial portion of the building has a narrow configuration which provides some limitations in its use and product flow.
- The industrial section of the building has only twelve foot high ceilings and lacks loading docks.
- There is one heating system for the entire structure making it difficult to isolate certain areas or to have tenants pay their heating.
- The mixed use of the Property (industrial, office, and commercial) could possibly result in some incompatibility depending on the actual tenants or occupants of the various portions of the building.
- Inherent in the Property's age and history is, as with most buildings of this vintage, a lack of compliance with current building standards and handicapped access requirements.
- The Property is located in the Claremont, New Hampshire/Springfield, Vermont market, where in 1992, there was a surplus of industrial/commercial space.

First the Town is to be commended in recognizing the economic conditions affecting the Property and applying the 25% economic depreciation to the entire building value. The board finds the Town's economic depreciation

adequately reflects the effect of the Property's general location on its value and no

further economic depreciation is warranted for 1992. However, the board finds that many of the factors listed above affect the functional utility of the building and need to be further recognized in the functional depreciation of the various portions of the building. Further, the board finds the metal warehousing portion should have the physical depreciation increased to 15% (as apparently the Town did in subsequent years) because this type of construction generally depreciates at a faster rate than masonry construction. Consequently, the board finds the Town's replacement cost values for the various building portions should be as follows:

Building Type	Replacement Value	Physical Dep	Functional Dep.	Economic Dep	Depreciated Value
#1 & #2 Store/Comm. area	\$268,183	-30%	-20%	-25%	\$112,650
#3 Office area	\$203,141	-5%	-15%	-25%	\$123,050
#4 Industrial space	\$430,003	-25%	-20%	-25%	\$193,500
#5 Warehouse (metal bldg)	\$ 87,381	-15%	-10%	-25%	\$ 50,150
Paving	\$ 13,350	-25%	-10%	-25%	\$ 6,750
Total Building Value			\$486,100		
Land Value			\$ 31,000		
Total Property Value			\$517,100		

While this revised market value by adjusting the cost approach does not exactly correspond with the income approach, the board finds that lacking more definitive market value evidence, the revised assessment is more proportionate.

If the taxes have been paid, the amount paid on the value in excess of \$517,100 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 Page 8 Lloyd Matheson, Inc. v. Town of Charlestown Docket No.: 12809-92PT

TAX 203.05, unless the Town has undergone a general reassessment, the Town shall

also refund any overpayment for 1993. The Town testified that in 1994 the economic depreciation was increased on the office portion to 50% to account for the vacancy and lack of demand for the space. As this was a determination of economic depreciation distinct from any depreciation the board has ordered in its decision, the Town should apply that 50% economic depreciation in 1994 and subsequent years if the Town determines it is a reasonable good faith adjustment. See TAX 203.05.

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 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

Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lloyd Matheson, Inc., Taxpayer; and Chairman, Selectmen of Charlestown.

Dated: January 5, 1996

Valerie B. Lanigan, Clerk

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