

Myriad Management Group, Inc.
Formerly G.I. Venture

v.

Town of Marlborough

Docket No.: 12922-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$149,250 (land, \$23,000; building, \$126,250) (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 1989 by G.I. Ventures at auction and has remained vacant, except for a few months in 1991, and has been for sale since the purchase;

- 2) in November, 1992, Beauregard & Grimes entered into a lease purchase agreement with a purchase price option of \$119,000 (\$19,000 consisted of contents);
- 3) a zoning special exception to use the Property as a restaurant had expired;
- 4) the Town does not recognize this as an arms-length transaction; and
- 5) the Town should assess the Property by equalizing the **\$119,000** lease purchase price.

The Town argued the assessment was proper because:

- 1) the Taxpayer did not dispute any information on the property-record card;
- 2) the Taxpayer's lease purchase price cannot be utilized as it merely reflects market value and not assessment value;
- 3) the Town does not use the equalized ratio for taxation purposes as the tax rate would be higher;
- 4) the Town was last revalued in 1986 and assessments in Town are in 1986 dollars per the State Manual; and
- 5) the Taxpayer was not paying a disproportionate share of taxes.

The board's inspector inspected the Property, reviewed the Property's assessment card, reviewed the parties' briefs and filed a report with the board. The report was provided to the parties with additional time for them to comment.

Board Findings

Based on the evidence, the board finds the proper assessment to be \$107,000 (land \$23,000; buildings \$84,000).

This assessment is arrived at by depreciating the improvements of the Property by 30% for physical depreciation and 25% for functional

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obsolescence. This assessment if equalized by the Town's 1992 ratio of 76% provides an indicated market value of \$140,800 ($\$107,000 \div .76$).

While the board understands the Town's desire to remain with the replacement cost methodology in place for assessing properties in Town, such assessments must be reviewed (see RSA 75:8) and adjusted if significant changes have occurred in the market for the type of property or in the physical or legal status of the property. In this case, the original portion of the dwelling had received 15% physical and 10% functional with an addition in 1988 receiving no depreciation. The board finds that a property such as this that was originally a dwelling converted to a restaurant use must be looked at carefully for proper depreciation. Evidence before the board indicates the Property as of April 1, 1992 had significant deferred maintenance and had lost its grandfathered ability to be operated as a restaurant. These are all factors that significantly affect value and should be accounted for in proper depreciations in the replacement cost approach.

Mr. Bartlett's report was reviewed and considered by the board in arriving at this decision and generally supports the board's findings. Mr. Bartlett reported on the physical problems with the building, the loss of the grandfathered permit to operate the Property as a restaurant and the subsequent improvements to the Property.

If the taxes have been paid, the amount paid on the value in excess of \$107,000 shall be refunded at interest at 6% per annum from date paid to refund date RSA 76:17-a. This decision applies solely to the 1992 tax year.

Both Mr. Bartlett's report and the Taxpayer's response to it presented evidence to subsequent physical and legal changes to the Property that

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should be the basis of the Town's good faith adjustments to this ordered 1992 assessment for tax years 1993, 1994 and 1995. The Town should review this evidence of the subsequent years and adjust the board's ordered 1992 assessment relative to the improvements made to the Property. See TAX 203.05 (f) (k) (copy attached).

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 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

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Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John P. Beauregard, Representative for Taxpayer; and chairman, Selectmen of Marlborough.

Dated: July 31, 1995

Melanie J. Ekstrom, Deputy Clerk

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