

Crossroads Truck Stop

v.

Town of Lancaster

Docket No.: 13003-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$320,160 (land \$83,973; buildings \$236,187) on a 1.27-acre lot with mixed-use buildings (the Property). For the reasons stated below, the appeal for abatement is granted. The board also denies the Taxpayer's request for costs and fees.

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 1988 (base) assessment was calculated during the peak of the market, resulting in overvaluation;
- (2) the Taxpayer bought the Property in August 1991 for \$135,000 with a favorable financing package but with the Property having several problems;
- (3) the Property is not located on a major thoroughfare but is on a local street, which

adversely affects the value for the Property's present use;

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(4) the business struggles and the taxes contribute to this problem;

(5) the cost approach, as used by the Town, does not reflect the Property's value;

(6) an appraiser stated the land assessment was apparently based on sales on the major routes; the land was actually worth \$47,000 in March 1992; the total Property was worth \$165,000; an income analysis indicated a \$72,300 value; a cost analysis indicated a \$208,300 value, but the cost approach was not a good approach given the buildings' ages (difficult to estimate depreciation) and given the falling market; and

(7) the Property's highest and best use was as improved.

The Town argued the assessment was proper because:

(1) the assessment was based on the 1988 revaluation;

(2) the Property is within 100 feet of Route 3;

(3) the assessment was lower than the assessments on the main street;

(4) based on a review of assessments in the area, the assessment was consistent with nearby assessments;

(5) an adjustment was made based on the Town's review of all available information;

(6) the highest and best use may be something different than the present use; and

(7) the Town had some problems with the appraiser's opinion, including the purpose of the appraisal.

Unfortunately, the parties failed to exchange comparables or reports as required by the 14-day rules (TAX 201.33, 35), and the board did not receive the parties reports or their sales information.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$227,500, which equates to a \$175,000 market value. The board bases its conclusion on the following reasons.

1) This Property is a "mish-mash," making it difficult to determine the Property's value. However, the evidence was clear that the Property's highest and best use was as presently used -- as a multi-use Property with a gas station, car wash, and diner. There is no way the Property has a different highest and best use because any change in use would require a substantial change in the buildings and their uses. Unfortunately, the mixed uses discourage the development of more intensive uses of parts of the Property. For example, if the car wash could be converted into an auto body shop or an auto repair shop, the income for that portion of the Property might rise, but the income for the diner might go down or be completely lost. Additionally, the Taxpayer certainly demonstrated that it was managing the Property in a business-like manner.

2) The Taxpayer's value evidence -- its 1991 purchase and its appraiser's estimate -- supported the Taxpayer's testimony that the Property's \$246,275 equalized assessment was excessive. The board does not accept the Taxpayer's bank-sale price as being indicative of the Property's market value because the bank is not your typically motivated seller. The board could not fully accept the appraiser's value estimate because the report was not admitted due to noncompliance with the 14-day exchange rule (TAX 201.33, 35). Nonetheless, the appraiser was certainly competent and aware of values in the Town, and his testimony supported the Taxpayer's overassessment claim.

3) Additionally, the Town did not provide the board with sufficient information to support the assessment such as sales.

4) The board, after a review of the evidence, concluded the Property was worth \$175,000 based on the board's experience and judgment. This figure was then multiplied by the 1.30 equalization ratio, resulting in an ordered assessment of \$227,500.

If the taxes have been paid, the amount paid on the value in excess of \$227,500 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1993 and 1994. 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.

We deny the Taxpayer's request for costs and attorney's fees because the Town did not act in bad faith. See RSA 71-B:9 ("Costs may be taxed as in the superior court."); RSA 76:17-b (reimburse filing fee if plain factual error but not if judgment error); Tau Chapter v. Town of Durham, 112 N.H. 233 (1972) (superior court not authorized to award costs incident to abatement); Harkeem v. Adams, 117 N.H. 687, 690-91 (1987) (objective bad faith required to award attorney's fees).

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

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

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur H.K. Davis, Attorney for Crossroads Truck Stop, Taxpayer; and Chairman, Selectmen of Lancaster.

Dated: October 18, 1995

Valerie B. Lanigan, Clerk

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