

**N & P Assoc. Realty Trust**

**v.**

**Town of Merrimack**

**Docket No.: 13215-92PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessments of \$251,210 (land \$174,880; buildings \$76,330) on Lot 11 (14 Star Drive) a 1.83-acre lot with an office/garage building; and \$560,225 (land \$132,050; buildings \$428,175) on Lot 12 (20 Star Drive) a 1.193-acre lot with a warehouse (the Properties). The Taxpayer filed appeals in tax years 1989, 1990 and 1991, and the board ordered abatements for all three years to the current assessments. For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were 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 failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment on Lot 11 was excessive because:  
(1) the building is used for truck repairs and is in fair condition;

- (2) the office space does not have fire exits and therefore can only be used as storage;
- (3) based on the income approach and the comparable sales approach, the fair market value as of April 1992 was \$130,000;
- (4) Michael Monks' value opinion as of February 1994 was \$90,000;
- (5) the property was listed for sale with Monks & Co. for \$85,000 in 1994; and
- (6) the proper assessment should be \$174,200.

The Taxpayer argued the assessment on Lot 12 was excessive because:

- (1) the building is metal and in fair to poor condition;
- (2) a January 1992 appraisal by Joseph Fremeau estimated the market value to be \$320,000;
- (3) based on the income approach and the comparable sales approach, the fair market value as of April 1992 was \$315,000;
- (4) Michael Monks' value opinion as of February 1994 was \$290,000;
- (5) the property was listed for sale with Monks & Co. for \$290,000 in 1994; and
- (6) the proper assessment should be \$422,100.

### **Board's Rulings**

After the Taxpayer presented its case, the Town moved to, in essence, deny the appeal because the Taxpayer had not carried its burden of proof. The board granted that motion, and the board stated a written decision would be issued. While the Town's request was made at the close of the Taxpayer's case, the procedural result is the same as if the Town had presented a case, i.e., the board would have found the Taxpayer had not shown

disproportionality. The only difference in this case was that the board, having reviewed the Taxpayer's evidence during the hearing, was convinced that the Taxpayer had not and could not carry its burden of proof. Therefore, any further evidence or evaluation of the evidence was not required.

The board finds the Taxpayer did not carry its burden of proof because: 1) the board did not accept the Taxpayer's witness' analysis; 2) the Taxpayer supplied two value estimates by Monks and Fremeau, but no back up data or analysis was provided, making it impossible to weigh the probative value of those value estimates; and 3) although not determinative, the board gave some weight to its November 30, 1993 decision involving these Properties (N & P Associates Realty Trust v. Town of Merrimack, Docket Nos.: 7827-89, 8373-90 and 11612-91 PT).

The board found the following problems with the Taxpayer's witness' analysis, resulting in the board not accepting his value conclusions:

1) the comparables chosen were of questionable probative value, especially the lack of rental comparables from the Town;

2) the witness performed inadequate research for his report, including an inadequate market-rent survey for similar property in the Town;

3) the witness was generally unable to support the adjustments made in the comparison grids other than stating they were based on his judgement;

4) the witness performed inadequate research concerning the physical attributes of the comparables compared to the Properties, e.g., failure to account for alarms, sprinklers and railroad side yard, the witness' lack of knowledge concerning sale #5 on page 13 of his report; and

5) the witness' selected rents and square-foot values were based on the witness' judgement rather than sound appraisal technique, e.g., the selection of a \$2 per-square-foot rent.

The above problems made it clear the Taxpayer had not and could not carry its burden of proof. Valuing property is based on informed and supportable judgement. The board found the analysis was not supportable, and there were enough errors and problems to question the witness' value judgement.

Concerning the Monks and Fremeau reports, the board cannot rely upon conclusory information. Rather, the board scrutinizes and reviews appraisal information to determine whether the person giving the value opinion has done adequate research and analysis to present a supportable value opinion. This was not done in this case.

Finally, the board spent an extensive amount of time on the prior appeals concerning these Properties. The board attempted to inform the Taxpayer that it should be prepared to present sufficient information to show why a further reduction was warranted. The board is not nor can it be bound by its prior decisions, but the board is authorized to give prior decisions appropriate weight. Appeal of Public Service of New Hampshire, 120 N.H. 830, 833 (1980)(board may assign appropriate weight to its prior decisions). As indicated, the board did considerable analysis for those prior appeals, and the Taxpayer did not demonstrate that the appealed assessments, which were based on that prior decision, were erroneous. Again, we would have denied this appeal even if the board had not issued a prior decision.

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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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter of Northeast Property Tax Consultants, Agent for N & P Assoc. Realty Trust, Taxpayer; Jay L. Hodes, Esq., Counsel for the Town of Merrimack; and Chairman, Board of Assessors, Town of Merrimack.

Dated: December 15, 1995

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Valerie B. Lanigan, Clerk

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