

Peter Stanhope

v.

Town of Goffstown

Docket No.: 13842-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of:

\$304,100 (land \$112,900; buildings \$191,200) on Lot 38-3, a 15,300 square-foot lot with an office/apartment building; and

\$185,200 (land \$39,800; buildings \$145,400) on Lot 34-21, a 19,600 square-foot lot with a four-family home (the Properties).

The Taxpayer also owned, but did not appeal, another lot in the Town with an \$11,200 adjusted assessment. For the reasons stated below, the appeal for abatements is granted.

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 carried his burden and proved disproportionality.

The Taxpayer argued the assessment on Lot 38-3 was excessive because:

(1) it would be purchased for investment and not used by a single occupant or owner;

- (2) an expansion of the land value for the .35 acre lot indicates a per-acre value not supported by any sales of land even in the more desirable areas of town;
- (3) based on the market and income approaches to value, the Property had a proper assessed value of \$155,900; and
- (4) the Town's sales are in the "miracle mile" section of town and are not at all comparable to the Property.

The Taxpayer argued the assessment on Lot 34-21 was excessive because:

- (1) the Property is a four-family rental in a high traffic area which is not conducive to residential uses;
- (2) the Property has not been renovated to cure for the presence of lead paint;
- (3) four-family rentals are more difficult to finance; owner-occupied individuals have difficulty receiving conventional financing for this size property while investors are generally looking for larger number of units to purchase; and
- (4) based on both a general sales approach and an income approach, the proper assessment should be \$94,000.

The Town argued the assessment on Lot 38-3 was proper because:

- (1) several comparables of commercial properties support the assessment; and
- (2) both of the Taxpayer's comparables are bank or bank-influenced sales.

The Town argued the assessment on Lot 34-21 was proper because:

- (1) sales of two-family rentals (no four-family properties transferred) all indicate assessment-to-sales ratios that are reflective of the town-wide level of assessment;

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- (2) an analysis of the assessments of similar multi-family rental units indicates consistent assessments.

Subsequent to the hearing, the board viewed both Properties from the exterior and viewed the general neighborhoods and some of the comparables submitted by the parties.

Board's Rulings

Lot 38-3 (11 North Mast Street)

Based on the evidence, we find the proper assessment should be \$225,300 (land \$75,300; buildings \$150,000).

This is indeed not an easy property to value given the lack of good comparable market data. Nevertheless in reviewing and analyzing the evidence submitted, the board finds the indicated market value of \$233,900 ($\$304,100 \div 1.30$) is excessive. We estimate the 1993 market value to be approximately \$170,000.

The board approached its findings in two fashions:

1) a determination of an estimated market value of approximately \$170,000;
and

2) an adjustment of the Town's condition factor and depreciation on its assessment-record cards to recognize the various factors relative to this Property as testified to at the hearing and seen by the board on its view.

Market Value

The board reviewed the evidence to determine if the indicated market value of \$233,900 was reasonable.

The board gives little weight to the commercial comparables submitted

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by the Town in support of the assessment. We find those properties are in a significantly different commercial area and in many cases have different improvements than the subject.

The board viewed and gives most weight to the sale at 23 Main Street in Goffstown. This property, while also not identical to the subject Property, is more similar to it than all other comparables submitted. It is also within the same general, while not exact, neighborhood as the Property. However, the 23 Main Street property is neither in as good condition nor is the commercial space of the same quality as the subject. The board rejects that Town's arguments that the 23 Main Street property sale in September of 1995 for \$134,100 was tainted by its earlier acquisition in 1994 from Vermont Federal Bank. The Taxpayer testified as to the market exposure the property had for the second transfer, and we find it reasonable to consider the second sale an arm's-length transaction. While it is difficult to make exact adjustments not having seen the inside of either of the properties, the board concludes the Property, despite being slightly smaller, would command more in the market due to its better general condition, availability of parking (albeit not a large parking area) and the area devoted to commercial rental space.

The board considered and gives some weight to the Taxpayer's income analysis of the Property. However, we find the income approach for this Property is not conclusive of market value. The board disagrees with the Taxpayer that this Property would be transferred for strictly an investment purpose. Looking at the neighborhood and the Property itself, the board concludes the it would most likely be used as it is currently by an owner-occupant for a large portion of the space with the balance leased.

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Properties that are owner-occupied tend to command more in the market than an income approach to value would indicate. We do find, however, the income

approach provides some indication as to the depreciation and land adjustments necessary to be applied to the Town's methodology to result in a reasonable assessment.

Revised Assessment

In the second approach, the board determines the land condition factor and the depreciation given to the building is not adequate given the Property's location, condition and general desirability.

We find the land condition factor should be reduced from 300 to 200 to reflect the Property's mixed use of residential and commercial, its less desirable location than the "miracle mile" (the area of Route 114 closer to Manchester) and the limitation of the size of the lot and topography for parking.

Similarly, the board finds the improvement should receive 10% functional depreciation for the layout of the two main structures and the juxtaposition of two different construction types and styles. Further, considering the income approach, we find 10% economic depreciation should be applied to recognize the general decline in value for office and rental space such as this, vis-a-vis the 1988 market (the time of the last revaluation).

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A summary of these adjustments to the assessment-record cards are as follows:

land value	\$75,300
extra features (paving)	\$ 700
buildings	<u>\$149,300</u>
Total	\$225,300

This revised assessment when equalized provides an indicated market value of approximately \$173,000 ($\$225,300 \div 1.30$).

Lot 34-21 (55 Main Street)

Based on the evidence, we find the proper assessment should be \$145,200 (land \$39,800; buildings \$105,400).

This also is a difficult Property to value owing to the lack of market data for four-family rental units. The board approached this assessment in a similar fashion by arriving at a market value indication of approximately \$110,000 and by adjusting the Town's depreciation to reflect both the physical and economic factors affecting the Property.

Market Value

The board gives most weight to the market approach in this case and the two sales of three-family units that occurred in Goffstown in 1995. These two sales submitted by both the Town and the Taxpayer indicated a market value per-unit of approximately \$29,500. The Taxpayer argued these indicated per-unit prices need to be adjusted for number of units and date of sale. We find it should be adjusted for the number of units but not for the date of sale.

The board considered but gave little weight to the interpolations applied by the Taxpayer to estimate the market's adjustment for price-per-unit based on the number of units being purchased. We find the market data that existed for

Goffstown and comparable markets to be too few to extract good Page 7
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adjustments and that the general resource material was too heavily influenced by the Manchester market. The board is familiar with the Manchester rental market having heard appeals from that city and finds there would be some difference between the Manchester and Goffstown markets that would need to be accounted

for.

However, we do agree some adjustment for number of units is necessary to apply to the \$29,500 unit price derived from the three-family unit sales. We estimate an appropriate adjustment of 10%.

The Taxpayer argued the multi-family rental market has been improving since 1993 so that any 1995 sale would have to be adjusted negatively back to the 1993 market. The board reviewed the town-wide equalization ratios to determine if such a trend was indicated. The 1993 ratio was 130%, while the 1995 ratio was 135%. This difference indicates that on a town-wide basis for all property the market was continuing to decline slightly from 1993 to 1995. Further, we reviewed the Department of Revenue Administration's stratified ratio for duplex and multi-family properties. In 1993 the stratified ratio was based on only two sales and thus cannot be given any significant weight. In 1993 and 1994 more sales existed and the ratios in those two years (126 and 132 respectively) does not show a significant deviation from the Town-wide ratio. Thus the board concludes that the market in Goffstown was relatively stable during this period and no time adjustment is necessary.

Consequently, we estimate a market value of \$106,000 by adjusting the \$29,500 three-family unit value by 10% and multiplying it times the Property's four /units.

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Just as the Taxpayer did not rely heavily on the income approach in his estimate of value, similarly, we find the income approach does not fully recognize the market value of this Property. We do consider, however, the income approach in a general fashion in our economic depreciation applied to the Town's replacement cost.

Revised Assessment

Based on our view of the Property and the testimony, we find an additional 9% physical depreciation should be applied for the condition of the Property and 10% economic depreciation for the declining rents since 1988 and the high traffic location of the Property. These adjustments result in a revised assessment for the building of \$105,400 and a total assessment of \$145,200. Applying the Town's 1993 equalization ratio to this revised assessment results in an indicated market value of \$111,700 ($\$145,200 \div 1.30$), quite similar to the market value estimate of \$106,000. Therefore, we find the proper assessment to be \$145,200.

If the taxes have been paid, the amount paid on the value in excess of \$225,300 for Lot 38-3 and \$145,200 for Lot 34-21 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 1994 and 1995. 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.

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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

George Twigg, III, Chairman

Paul B. Franklin, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter Stanhope, Taxpayer; and Chairman, Selectmen of Goffstown.

Date: May 23, 1996

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Valerie B. Lanigan, Clerk