Frank McNamara

v.

Town of Campton

Docket No.: 13875-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of $106,700 (land $28,200; buildings $78,500) on a .145-acre lot with an office 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) the furnace area should be removed from the total square footage of the building because of its limited utility;

(2) the use of the building is limited because of its holding tank and severe topography which caused flooding in 1994;

(3) the land is disproportionately assessed when compared to the abuttors and other properties in the Town;

(4) the abutting 3.0 acre property was purchased by the Taxpayer in 1995 for $15,000;

(5) a January 1994 estimate of value indicated a fair market value of $93,000; and

(6) the fair market value as of April 1993 was $85,000.

The Town argued the assessment was proper because:

(1) the Taxpayer compared the assessment of land on residential properties and impact on the market has not been as great on commercial properties as it has been on apartments;

(2) the Town agrees with the building value determined by the Taxpayer's appraiser;

(3) the Property enjoys a great deal of exposure to the public in its in-Town location; and

(4) the Town has adjusted the land value to account for its steep topography.

Board's Rulings

Based on the evidence, we find the proper assessment should be $98,000 (land $19,500; buildings $78,500).

This assessment is based on revising the depth adjustment factor from an estimated 75% to 51%. The 51% factor is the standard depth adjustment factor for lots of this dimension as contained in the Department of Revenue Administration's appraisal manual.

The board understands the Town used a depth adjustment factor distinct from that of the manual as an attempt to recognize the possible commercial value of the lot. However, the board finds the lot's deficiencies (topography, shallowness, lack of expansion, etc.) offset the lot's

commercial location. Further, the board finds the Town used the standard depth factor in the Century 21 (Waterville Co., Inc.) property which also had some commercial potential.

The board finds the revised building value adequately reflects the lack of a full septic system and the lack of utility of the furnace area in the building.

If the taxes have been paid, the amount paid on the value in excess of $98,000 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.

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, <u>not the date this decision is received</u>. 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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Paul B. Franklin, 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 Frank McNamara, Taxpayer; and Chairman, Selectmen of Campton.

Dated:April 3, 1996 _____
Valerie B. Lanigan, Clerk

0006