

**Allenstown Development Partnership**

**v.**

**Town of Allenstown**

**Docket Nos.: 14157-93PT and 15308-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 and 1994 assessments of \$260,550 (land \$46,450; buildings \$214,100) on a commercial condominium building known as the Washington Building on a common lot of 3.24 acres (the Property). The Taxpayer also owned, but did not appeal, three other properties in the Town with a combined, \$383,750 assessment. For the reasons stated below, the appeal for abatement 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 its burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) the building was built in the late 1970's, is comprised of 4 condominium units none larger than 1,000 square feet and has not been updated commensurate with the quality of two buildings built in the 1980's;

(2) the building is not air-conditioned, has small hallways and was vacant for three years from 1988 through November 1991 and based on its age, design and condition attracts low end tenants;

(3) a March 1996 appraisal estimated the fair market value to be \$75,000;

(4) the assessment is greater per-square-foot than the other buildings in the complex and Suncook Business Park; and

(5) the 1993 assessment should be \$102,000 and \$109,500 for 1994.

The Town argued the assessments were proper because:

(1) there are numerous inconsistencies in the Taxpayer's appraisal;

(2) the capitalization rate used by the Taxpayer's appraiser is high and should be 12.5% excluding taxes;

### **Board's Rulings**

Based on the evidence, we find the proper assessment for both 1993 and 1994 is \$164,150 (land \$46,450; buildings \$117,700).

The parties agreed the equalization ratios for Allenstown were 136% for 1993 and 146% for 1994. The Town's assessment of \$265,550 provides an indicated market value of \$191,600 for 1993 ( $\$260,550 \div 1.36$ ) and \$178,500 for 1994 ( $\$260,550 \div 1.46$ ). Based on the exterior dimensions of the building, the indicated market value per-square-foot of the assessment is \$43.34 for 1993 and \$40.38 for 1994.

The Taxpayer's appraisal indicated a market value of \$75,000 and recommends an assessment for both years arrived at by applying a respective equalization ratio. The Taxpayer's market value equates to \$17.10 per-square-foot based on exterior dimensions in the square footage of 4,020 square feet.

The board finds the Town's indicated market value to be excessive and the Taxpayer's estimated market value to be low.

The Property is one of three buildings in an office/condominium complex known as President's Professional Park. The Property was constructed in 1979 and is of generally lower quality than the other buildings built in the mid-1980's.

Because of its uniqueness it is a difficult property to value. However, based on the board's experience and knowledge, we conclude the Property had a market value range of \$110,000 to \$120,000 in 1993 - 1994. This equates to an approximate market value per-square-foot of \$25.00 to \$27.00. The board finds this estimate of value to be more reasonable than the Taxpayer's \$17.00 per-square-foot and the Town's \$40.00+ per-square-foot.

The board reviewed and gave some weight to the Taxpayer's appraisal. However, we find the income approach does not fully capture the Property's value. The income approach was based on a highest-and-best-use assumption of the Property being rental office space. Because the Property is a condominium and could be owned by one entity and either fully or partially occupied with the balance leased, the board finds the Property has value that the income approach may not fully reflect. Also, some of the assumptions in the Taxpayer's appraiser's capitalization rate calculation tended to be conservative (loan-to-equity ratio and the equity yield rate) and resulted in a relatively high overall capitalization rate of 17.4%. Further, in the appraiser's sales approach there were very few good comparables due to the uniqueness of the Property. The comparables used required relatively significant adjustments to arrive at an indicated value per-square-foot.

Again, the appraiser's correlation of the indicated price per-square-foot of \$24.00 was conservative based on the indicated sales prices of the comparables. However, even with that conservative correlation, the indicated value by the market approach was higher than the income approach at \$91,000.

The board reviewed the Town's assessment calculations and found them to be excessive as to the original rating of the building and minimal as to the depreciation allowed. The board performed its own replacement cost estimate using the 1987 Marshall & Swift manual and arrived at an indicated depreciated replacement cost of the building of \$117,700 (calculator cost form is attached and made part of this decision). Based on the evidence, the board finds the Town's classification of the building as a medical office building, despite its original use as that, overstates the physical aspects of the building. The board concludes that the average office classification is reasonable. Further, in reviewing the assessment-record card and based on the testified physical condition of the Property we find the Town's original depreciation of 20% and 30% (for the two building sections) to be more appropriate. Also, based on the market information contained in the Taxpayer's appraisal, the board finds economic depreciation of 20% should also be applied. Adding the Town's land assessment of \$46,450 to the building value of \$117,700 results in a proper assessment of \$164,150.

Again, this assessment when equalized by the Town's 1993 and 1994 ratios provide an indicated market value range of \$110,450 to \$120,700. Based on the board's experience and the evidence submitted, the board finds this is as reasonable an assessment as one can produce given the evidence.

If the taxes have been paid, the amount paid on the value in excess of \$164,150 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, 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.

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 Peter D. Wenger, Esq., Counsel for Allenstown Development Partnership, Taxpayer; and Chairman, Selectmen of Allenstown.

Dated: April 10, 1996

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Valerie B. Lanigan, Clerk

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