

**Lawrence Finch**

**v.**

**Town of Bedford**

**Docket No.: 14250-93PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$520,000 (land \$147,000; buildings \$373,000) on a 39,204 square-foot lot with a branch bank (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 this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Town had originally voted to lower the assessment to \$425,000 but for some reason the Taxpayer was told the assessment would remain at \$520,000;
- (2) the Town gave some abatements without changing those assessment cards and without changing the assessments on all similar properties; and
- (3) an appraisal estimated an April 1, 1993 value of \$360,000.

The Town argued the assessment was proper because:

- (1) it was supported by two other branch office sales that did not involve the FDIC;
- (2) the Taxpayer's vacancy rate was too high, the income too low, and the appraisal used bank sales;
- (3) the assessment was consistent with other bank assessments in the Town; and
- (4) the Town council erred in voting that the assessment be lowered.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment should be \$480,000 which equates to a \$400,000 market value. The board grants this appeal based on the following.

1) The Taxpayer presented a competent appraiser who reviewed and analyzed the available market data, and his value conclusion indicated overassessment.

2) The Town, however, raised legitimate questions about whether the market information used by the Taxpayer was tainted by the FDIC involvement, raising the question of whether the sales and income data were reflective of market value.

3) The Town underwent its last complete revaluation in 1987. Thus, the assessment was based on 1987 market data, and the market has undergone substantial changes both up and down since 1987. The Taxpayer's sales and retail information gave a picture of the 1993 market for bank properties, and this picture was dominated by the FDIC. The FDIC's activity, which may not be representative of market value, certainly affected the market generally, and the assessment did not reflect this.

4) The Town's sales were also not market sales because the sales prices were based on appraisals and not based on the give and take of the market.

5) The \$400,000 value, arrived at by the board, is based on the board's review of the evidence and conclusion concerning a fair market value for the Property.

If the taxes have been paid, the amount paid on the value in excess of \$400,000 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, 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

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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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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Lawrence Finch, Taxpayer; and Chairman, Selectmen of Bedford.

Dated: April 3, 1996

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Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" rehearing motion which is denied. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See 541:3.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Mark Lutter, Taxpayer's representative; and Chairman, Selectmen of Bedford.

Date: May 10, 1996

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Valerie B. Lanigan, Clerk