

Soiland, Inc.

v.

Town of Milford

Docket No.: 14746-93PX

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$267,600 (land \$82,300; buildings \$185,300) on a 11.55-acre lot containing a commercial service garage with an apartment and a mobile home (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 parcel had been used as a landfill for building material and later for some barrels of hazardous waste; as of 1993, the site's surface had been reclaimed and test wells installed with ongoing monitoring;
- (2) the site is accessed by a right-of-way, which limits the industrial use of the Property due to the adjoining residential property and the narrowness of the right-of-way;

- (3) any further development of the site is limited by the areas of building material fill and the floodplain; and
- (4) due to the hazardous waste history of the Property, conventional financing is not be available.

The Town argued the assessment was proper because:

- (1) the monitoring of the wells has not shown that the site has or is significantly contaminating the groundwater or the Souhegan River with the exception of some freon contamination;
- (2) the variance granting use of the Property for a garage for storage and maintenance of commercial equipment adds some additional value above residential site values;
- (3) sales of industrial land in 1992 to 1995 indicated a market value of approximately \$53,000 per acre;
- (4) the land assessment of \$82,300, if equalized by the Town's 1993 ratio, indicates a land value of approximately \$59,000 ($\$82,300 \div 1.39$);
- (5) a land value of \$59,000 is reasonable given the commercial use and two residential uses on the Property; and
- (6) public water has been brought to the site by the Taxpayer.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$240,800 (land, \$74,060; building, \$166,750). Based on the Town's 1993 equalization ratio of 1.39, this assessment indicates a equalized value of approximately \$173,300 ($\$240,800 \div 1.39$). This assessment is arrived at by applying 10% economic depreciation to both the land and the building portions of the Town's

assessment.

This indeed is a difficult Property to arrive at a certain estimate of market value due to its uniqueness. The Town is to be commended on its consideration of the evidence submitted by the Taxpayer and review of the assessment. However, the board finds the Property should receive an additional 10% economic on both the land and building to adequately recognize the unique factors of the Property and based on the limited market evidence available in this case.

UNIQUE FACTORS

Both parties agreed the Property was unique and difficult to value. The board finds the following factors affect the Property value and need to be accounted for in the depreciation under the Town's replacement cost approach.

1) The Property was a former landfill site and at one time contained hazardous materials. While the site has been apparently cleaned on the surface, the on-going monitoring of the test wells and the Property's history would create some stigma in the mind of a potential purchaser.

2) The Property's history and on-going monitoring of test wells could limit conventional financing for the Property or, in the very least, require further engineering reports and analyses to satisfy a lending institution of its security.

3) The narrow width of the Property's right-of-way and its location through residential property would have a practical limitation on future commercial or industrial use of the Property. The Taxpayer testified that it was able to minimize the right-of-way's impact due to the ability to access the Property through adjoining properties owned by related family members. That alternative is available only to the current owner and is not a right that would necessarily be transferred with the Property being assessed.

4) A variance granted the Taxpayer to use the Property for "storage and maintenance of agricultural and commercial business equipment owned by Mr. Trombly" is worded in such a fashion to raise a question of whether the effect of the variance would be transferrable to another owner. While variances normally run with the property, the wording of this variance raises an issue that would have to be addressed if the Property were to be transferred.

5) The Property is serviced by public water. However, the line is not along the Property's right-of-way but rather across the adjoining land owned by other family members. Apparently, the water line was installed by the Taxpayer with permission of other family members and is metered along with the residence on the adjoining property. Such an arrangement apparently is convenient for current owners but again raises the question as to its transferrable value to a non-related owner.

These factors affect not only the value of the land but also reflect on the improvements on the Property. While the Town did provide some economic depreciation (10% on the garage/apartment and 15% on the mobile home), the board finds an additional 10% should be applied to the total land and buildings to reflect these factors.

Mr. Trombly, principal owner of Soiland, Inc., testified in response to a question from the board that the indicated market value arrived at by equalizing the Town's assessment reasonably reflected the substitution value to him of the Property. The board found Mr. Trombly to be very forthright and credible. The board finds, however, his response reflects his value in use as opposed to the Property's value in exchange. In valuing property for tax

purposes, value in exchange is what must be considered as opposed to value in use. Value in use, as in this case, is often a value unique to a certain owner as opposed to value unique to the property itself.

MARKET VALUE EVIDENCE

The Town submitted evidence of the sale of the Lyskawa property that in some ways is similar to the Taxpayer's in that it has a right-of-way access and has limited useable area due to wetlands. The Lyskawa property sold in August of 1993 for \$186,000 and again in June 1995 for \$220,000. The Lyskawa property, while having a smaller garage and office area, does not have the landfill and hazardous waste history, the water supply issue or as limiting a right-of-way. The difference between the board's final indicated market value of \$173,300 and the Lyskawa sales of \$186,000 and \$220,000 is approximately 7% and 21% respectively. The board finds these differences between the two properties reasonably account for the factors mentioned above and the difference of the improvements.

If the taxes have been paid, the amount paid on the value in excess of \$240,800 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 1993, 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Stephen H. Trombly, representative for the Taxpayer; and Chairman, Board of Selectmen of Milford.

Dated: January 11, 1996

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" December 26, 1995 continuance motion.

Motion denied. Board will hold a hearing but will not issue a decision until the selectmen make a decision on the assessor's \$45,000 recommendation.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Stephen H. Trombly, Taxpayer representative; and Chairman, Selectmen of Milford.

Date: February 26, 1996

Valerie B. Lanigan, Clerk

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ORDER

This order relates to the "Taxpayer's" February 14, 1996 motion for reconsideration, which is denied. The request was postmarked more than 20 days after the July 29, 1992 decision.

Therefore, the request is denied. See RSA 541:3.
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I certify that copies of the within Order have this date been mailed, postage prepaid, to Robert and Gail T. Capriole, Taxpayers; and Chairman, Selectmen of Sandown.

Date: August 28, 1992

Melanie J. Ekstrom, Deputy Clerk