

Richard Person

v.

Town of Campton

Docket No.: 14762-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$303,200 (land \$133,200; buildings \$170,000) on a 2.0-acre lot with a concrete mixing plant (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 Property is a special use property with a highest and best use as its present use as concrete batch plant and service garage;
- (2) the only access to the Property is through the adjacent property due to the steep embankment along the frontage that would make creation of direct

access difficult; and

Page 2

Person v. Town of Campton

Docket No.: 14762-93PT

(3) a March 1996 appraisal using the cost approach to value the buildings and land sales to value the land estimates the fair market value to be in the \$115,000 to \$135,000 range.

The Town recommended revising the assessment to \$248,700 (land \$107,400; building \$141,300) and argued the revised assessment was proper because:

(1) the Property is located just 1/2 mile from I-93 on an industrial site and it has the monopoly on concrete production as the only concrete plant north of Sanbornton;

(2) the Taxpayer's land sales were not arm's-length transactions;

(3) the 2,880 square foot service garage was incorrectly priced as having 1,880 square feet by the Town - the revised values should be \$56,500, 43,000 and 41,800 for the three buildings with recommended adjustments of 15% physical and 10% economic depreciation to the buildings; and

(4) comparable land sales support the recommended revised land assessment.

Following the hearing, the board viewed the Property with the plant manager, Robert Gilman. Mr. Gilman took the board through the concrete batch plant and pointed out the approximate bounds of the lot.

Board's Rulings

Based on the evidence we find the proper assessment to be \$229,100 (land

\$107,400; buildings \$121,700).

Two basic issues were raised in this appeal: 1) what property is realty versus personalty?; and 2) what is the proper valuation of the real estate?

Fixtures

Based on an analysis of the facts and our view of the Property, we conclude that the batch mixing plant is entirely taxable as a fixture.

Page 3
Person v. Town of Campton
Docket No.: 14762-93PT

The board's review of the definition and the authority to tax fixtures follows.

The authority to tax fixtures as real estate is found in RSA 72:6 and RSA 21:21. RSA 72:6 states: "All real estate, whether improved or unimproved, shall be taxed except as otherwise provided." This statute is to be broadly interpreted. King Ridge, Inc. v. Sutton, 115 N.H. 294, 298-99 (1975).

RSA 21:21 (emphasis added) states: "The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein."

In addition to these statutory criteria, the caselaw on fixtures must be examined--fixtures being taxable as realty. As stated in The Saver's Bank v.

Anderson, 125 N.H. 193, 195 (1984):

A chattel loses its character as personalty and becomes part of the realty when there exists "an actual or constructive annexation to the realty **with the intention of making it a permanent accession to the freehold**, and an appropriation or adaptation to the use or

purpose of that part of the realty with which it is connected."
However, if a chattel becomes an intrinsic, inseparable and
untraceable part of the realty, it is deemed a fixture regardless
of the intent of the parties. (Citations omitted)

Black's Law Dictionary defines "fixture," in part, as "an article in the
nature of personal property which has been so annexed to the realty that it is
regarded as a part of the land. . . . Goods are fixtures when they become so
related to particular real estate that an interest in them arises under real
estate law."

Based on this review, we conclude the batch plant containing the mixing
equipment inside a steel framed, metal sheathed building and the cement tank
attached to piers outside the batch plant should be considered taxable as

Page 4
Person v. Town of Campton
Docket No.: 14762-93PT

fixtures. The highest and best use of the Property is as a special purpose
property built for mixing concrete. These two fixtures are intimately
entwined with the primary use of the real estate and without their attachment
to the real estate, the real estate could not achieve its highest and best use
potential. The site has, to some extent, been adapted or modified to contain
these fixtures. The batch plant is contained within the steel framed, metal
sheathed building and the cement tank has been bolted to concrete piers with
the intent of its being a functional part of the real estate.

Proper Valuation

The board agrees with the parties that the Property can be classified as a special purpose property. The general concept of special purpose buildings is that they are uniquely adapted to a single use and any conversion to other uses would require extensive renovation. Further, since the Property was constructed for a special purpose, its highest and best use is considered to be that purpose. Appraisal Institute, The Appraisal of Real Estate 10th edition (1991); International Association of Assessing Officials, Property Appraisal and Assessment Administration 169, (1990); Joan Youngman, Legal Issues in Property Valuation and Taxation: Cases and Materials 41 (1994).

We find the cost approach is generally the best approach to use for valuing a special purpose property. In this case we find the Town's replacement cost calculations more accurately approximate the Property's taxable market value versus the Taxpayer's agent's report (Exhibit Taxpayer #3). Specifically the board agrees with the correction of the square footage in the section #1 service garage and the depreciation and adjustments given the Property with the exception of the economic depreciation. We find the

economic depreciation should be increased from 10% to 20%. The board finds this type of Property being tied directly to the real estate and construction industry did suffer significant economic depreciation as a result of declining

construction in the late 1980s and early 1990s.

The board finds no functional obsolescence is necessary as suggested by the Taxpayer's agent because once determination is made that the highest and best use for the Property is for its special purpose, no functional depreciation is appropriate for consideration of alterations or renovations for an alternative use.

Due to the steep topography along its frontage, the Property does not have direct access onto Route 49. The access is across adjoining property of Campton Sand and Gravel by a verbal agreement. Based on our view of the Property, we conclude that it would be difficult to access Route 49 directly from the Property. Therefore, an adjustment for not having a recorded easement is appropriate in adjusting the land value. We find the Town's recommended 20% adjustment for access and the resulting land value of \$107,400 is reasonable.

We find the Taxpayer's land sales are not good indicators of the lot's value due to circumstances that could disqualify the sales as arms'-length. The Town testified there were no sales of industrial property on which to base the land value. However, we find the \$500 front foot unit price as adjusted by the Town results in a reasonable assessment given the Property's special use and excellent location relative to Interstate 93.

In summary, the board finds the proper assessment to be calculated as follows:

<u>Land value:</u>	\$168,950	x .90	x .85	x .80 =	\$103,400
		(topo.)	(ex. front.)	(access)	
<u>Well and septic:</u>					\$ 4,000
<u>Service Grg.- Section #1:</u>	\$73,800	x .85		x .80 =	\$ 50,200
		(phys. dep.)		(econ. dep.)	
<u>Service Grg. - Section #2:</u>	\$56,150	x .85		x .80 =	\$ 38,200
		(phys. dep.)		(econ. dep.)	
<u>Batch Plant:</u>	\$49,000		x .85	x .80 =	<u>\$ 33,300</u>
			(phys. dep.)	(econ. dep.)	
Total Valuation					\$229,100

If the taxes have been paid, the amount paid on the value in excess of \$229,100 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

Page 7

Person v. Town of Campton

Docket No.: 14762-93PT

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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kathleen Collins, Agent for Richard Person, Taxpayer; and Chairman, Selectmen of Campton.

Dated: May 3, 1996

0006

Valerie B. Lanigan, Clerk