

Christy's Realty Limited Partnership

v.

Town of Exeter

Docket No.: 15038-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$357,600 on a convenience store (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry its burden.

The Taxpayer's arguments are stated in Taxpayer Exhibit No. 1 under the tab "Taxpayer's Arguments." Those arguments are incorporated in this decision.

The Town argued the assessment was proper because:

- (1) The Property is in a prime downtown location, and its location and parking are excellent for a convenience store; and
- (2) the Property added a Taco Bell franchise, which demonstrates the Property's prime location.

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The Town also responded to the Taxpayer's arguments.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove overassessment.

The Town did a dismal job of supporting the assessment. Nonetheless, the board ultimately decided this case based on the Taxpayer's burden of proof, and the board's judgement that the \$360,000 approximate equalized value was not excessive on its face.

The Property is in a prime downtown location, and uniquely, it has seven off-street parking spaces. The location and configuration of the Property is excellent for any convenience store, which appears to be the Property's highest and best use. Given the Property's 1989 renovations and the availability of off-street parking, the board could find no major deficiencies in the Property itself.

Turning to the Taxpayer's arguments, the board responds to the arguments with numbers referencing Taxpayer Exhibit No. 1.

1) The Cumberland Farms sale does not show overassessment of the Property. First, the Cumberland Farms building was far inferior to the Property's building. Secondly, the Property has a far superior location to the Cumberland Farms store. The Cumberland Farms property is not in the true downtown area and is at an intersection that inhibits traffic flow in and out of the parking lot. Additionally, the Taxpayer did not present any good comparison between these two properties.

2) The Town's willingness to settle this case is irrelevant to the board's decision.

3) & 4) The realtors' value opinions were analyzed, and then given no weight. Based on these value opinions the Property had a value of \$150,000 to \$250,000. This is an unacceptable range. Additionally, while the realtors' letters included some information about other sales, the realtors did not present sufficient comparison between the sales and the Property, e.g., an adjustment grid comparing the comparables to the Property with adjustments to the comparables as warranted. Finally, the board concludes that the Property was certainly worth more than \$150,000 to \$250,000.

5) The board does not accept the Taxpayer's time trending the 1989 purchase price by using a state-wide time adjustment. Different segments of the market were affected differently from 1989 to 1994. Thus, applying a state-wide statistic does not allow a reasonable time trending of this excellent Property. The board notes that the Taxpayer purchased the Property in 1989 for \$227,000 and made approximately 100,000 in renovations, resulting in a \$327,000 investment.

6) The Taxpayer's income approach could not be relied upon because the rental properties chosen by the Taxpayer were not comparable to the Property. Most were not freestanding, single-unit buildings with off-street parking. Because the board could not rely upon the chosen rents, the remainder of the income approach was not analyzed.

7) In the cost approach, the parties basically agreed on the improvement values, but they disagreed on the land value. The Taxpayer used a \$47,000 downtown land sale, but the Town adequately explained why that land sale was not an appropriate comparison. Specifically, the Town stated the land sale was vacant because the buildings had burned down, requiring substantial

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permitting to construct a new building. Additionally, the property had rights-of-ways

on both sides and a fish ladder easement. Lacking any other land value, the board rejects the Taxpayer's cost approach. The board, however, comments that the Town stated land sales on the "miracle mile" were between \$120,000 and \$200,000, and the Town stated these land sales were probably higher than the Property's land value (\$222,000 equalized but as developed). Again, the Town has failed to present sufficient evidence in this appeal.

8) The board rejects the Taxpayer's sales comparison approach because the comparable properties were not similar to the Property and because the Taxpayer did not perform any true valuation analysis. To the extent the Taxpayer's agent intends to make value arguments to the board, he needs to do more than just perform a mathematical function. All valuation work involves reviewing available data and making informed judgements. The Taxpayer's agent certainly performed extensive research and presented a well-organized case. But without the agent using informed judgement, e.g., having a general sense of the market and a property's worth, it will be hard to adopt the agent's asserted value.

9) While comparative assessments can oftentimes be helpful, the board focuses on whether the equalized assessment was excessive compared to a property's market value. Such a comparison reviews whether an assessment exceeds the general level of assessment in a town. In this case, the board rejects the Taxpayer's assessment comparisons because the equalized value was not shown to be excessive and because the Taxpayer's analysis of the comparable assessment does not warrant a reduction. Specifically, the

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Property is a unique property and performing broad-brush comparisons based on square footage of other downtown properties does not prove the Property was overassessed.

10) The board agrees that the Town did not supply any sales to support the assessment, but the board was unable to conclude that the assessment was on its face excessive.

11) The historic district regulations place limits on the Property's use. Nonetheless, this Property has been fully renovated and reconfigured as of 1989, and thus, the Property is already maximally productive given the use restrictions.

12) The Taxpayer's purported ratio study was insufficient to overcome the presumption that the revenue department's ratio study represented the general level of assessment. See Appeal of City of Nashua, 138 N.H. 261, 265-267 (1994).

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 Page

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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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David Irwin, Representative for the Taxpayer; and Chairman, Board of Selectmen of Exeter.

Date: November 4, 1996

Valerie B. Lanigan, Clerk

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