

New England Timber Realty

v.

Town of Antrim

Docket No.: 15066-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$150,900 (land \$29,000; buildings \$121,900) on a 7.6-acre lot with a warehouse (the Property). The Taxpayer also owns, but did not appeal, two other lots in the Town with a combined, \$37,100 assessment. 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) only 1.5 acres of the total land area is level (2.5-3.0 acres is wetlands and the rest is steep hillside);
- (2) the Town has assessed a second site value where the leach field is located;
- (3) a December 1994 market analysis suggested a maximum \$85,000 value;

- (4) two purchase and sales agreements (\$122,500 in late 1994 and \$95,000 in 1995), which included the Taxpayer's abutting lots 1601 and 1602, fell through due to the large wetland area, the declining real estate market or difficulties in obtaining financing;
- (5) the Property sold in August 1996 for \$75,000, including Lots 1601 and 1602;
- (6) deducting the assessments for Lots 1601 and 1602, the proper assessment for the Property should be between \$37,900 and \$56,500; and
- (7) the Town's comparables were inappropriate due to large differences in land size, topography and building features.

The Town argued the assessment was proper because:

- (1) the Town was revalued in 1993 and has experienced a severe economic decline for 8 years;
- (2) the Taxpayer's original purchase & sale agreement fell through because it was supposed to be a "cash deal" and the prospective purchaser did not have enough dry land to lay logs;
- (3) the comparisons used are the most similar in Town and the Property's building is the newest and was fairly assessed; and
- (4) the land value may be high in that a secondary site should probably not have been assessed.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$101,500 (land, \$20,000; building, \$81,500).

The Taxpayer stated the Property had recently sold for \$75,000 (including the two adjoining lots not under appeal). While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). In this case, Page 3
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the board finds that although the sale may not provide a conclusive indication of the Property's value it is some evidence of value and should not be ignored. The board also considers and gives some weight to the market value suggestions of the two earlier purchase and sales agreements. Prior to the sale of the Property, the Taxpayer had received two purchase and sales agreements that were written but not consummated. The first purchase and sales agreement in 1994 was for \$122,500 and the second in 1995 was for \$95,000. The Taxpayer testified that some of the reasons given by the potential purchasers for not being able to finalize a sale included the presence of the wetlands and the declining real estate market. The Taxpayer also stated the Property had been listed for sale by a real estate broker and marketed for an extended period of time prior to the sale.

The board concurs with the Town and Taxpayer that the secondary site listed on the assessment-record card should be deleted as it is the location of the leach field for the septic system rather than a cleared and leveled second building site. The board has recalculated the land portion of the assessment by removing the second site acre and adding it to the rear land resulting in a land assessment of \$20,000.

The Town indicated that there were no recent sales of comparable properties in the Town of Antrim. The Town used the assessments of three properties that were somewhat similar to the Property to show that the Property was not disproportionately assessed. The board gives these comparable assessments little weight because although the three comparable properties had some similarities to the Property, there were some significant differing characteristics that should have been addressed. Some of these include the minimal amount of office space in the Property's building as well as the lack of any central heating system.

The Town stated that property values have declined steadily for the past eight years and the area was in an economic depression. The Town was reassessed in 1993 and the equalization ratios for 1994 (111%) and 1995 (127%) give credence to this statement.

In determining the value of the improvements, the board utilized the 1993 Marshall Valuation

Service. This service has been a nationally recognized authority in the appraisal field for many years. The board finds that the base-price unit value as indicated on the assessment-record card was too high based on the description of the quality of the building. The board finds the Property is more properly described as a low cost service garage. After adjustments are made for unheated area, height, size and regional location, the price per square foot approximates \$16.00. Because no photographs were provided to assist the board in determining a depreciation factor, the board applied the 9% factor indicated on the assessment-record card. These calculations indicated a market value of \$73,400 for the building. The assessed value (\$81,500) for the building was calculated by multiplying the market value by the 1994 equalization ratio (\$73,400 x 1.11).

If the taxes have been paid, the amount paid on the value in excess of \$101,500 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 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

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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, Chairman

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 Joseph Winsten, President of New England Timber Realty, Taxpayer; and Chairman, Selectmen of Antrim.

Date: November 27, 1996

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Joseph Winsten, representative for the Taxpayer; and Chairman, Selectmen of Antrim.

Date: January 6, 1997

Valerie B. Lanigan, Clerk

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