

Steven J. Snelling
TSV Tennis, Inc.

v.

Town of Charlestown

Docket No.: 15074-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$175,700 (land \$38,500; buildings \$137,200) on a 5.0-acre lot containing a tennis club (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was built in 1978 and no renovations have been made since then;
- (2) the Property's high ceiling and lack of reinforcement in the concrete floors makes other uses less probable;
- (3) the Property's only overhead door has no outside access, reducing its use;

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- (4) the Property has no town water or sewer; the Town assessed \$6,000 for on-site water and sewer when these are really detriments to the Property because of code, insurance, zoning and planning requirements;
- (5) similar properties have closed due to lack of market activity;
- (6) the land value should be reduced to reflect the poor access, lack of topsoil and poor topography and the "homesite" should be reduced to 1-2 acres;
- (7) the building should be valued "low cost" and not average because the Property lacks amenities found in similar structures, i.e., snack bar, exercise facilities and concrete courts;
- (8) the Property should receive both functional and economic depreciation; and
- (9) the Property's April 1, 1994 fair market value should be \$120,000.

The Town argued the revised assessment was proper because:

- (1) the homesite acreage was assessed consistently for all commercial properties in the Town -- \$15,000 for four acres with a 50% depreciation for topography;
- (2) functional depreciation is not applicable because the Property is being used as it was intended -- tennis; and
- (3) the assessment reflects an additional adjustment because the Town erroneously assessed an artesian well when there is Town water.

BOARD'S RULINGS

Based on the evidence, the board finds the proper assessment to be \$144,700 (land \$38,500; buildings \$106,200). Three issues were raised by the Taxpayer: 1) the land assessment; 2) the building assessment; and 3) the assessment for the water supply (note: the Town adjusted the assessment for Town water; therefore, the board does not need to address this issue).

Land

The Taxpayer argued that the land calculation assigned to the base site value should be 1.0 to 2.0 acres rather than the 4.0 acres used by the Town and that the rear acreage should be increased by the difference. The reason for this adjustment was based on the Property's poor topography and topsoil

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which negatively impact its value. The Taxpayer specifically cited three properties (M13/L27-2; M13/L27-3; M13/L27-4) where the Town had adjusted the base acreage and argued that these properties were inferior or had similar topography to the subject.

For the following reasons, the board finds no adjustment to the land value is warranted.

1) Of the three properties above, the Town applied no depreciation to the original 4.0 acre site values. When the lots were reviewed and adjusted by the Town, the base lot size was changed, however, the \$15,000 unit price remained indicating an appraised value of the sites as follows:

M13/L27-2	2.6A	\$38,400
M13/L27-3	2.0A	\$30,000
M13/L27-4	3.0A	\$45,000

2) The Town applied a 50% topography adjustment to the Property's site

value for an appraised site value of \$30,000. If the board were to accept the Taxpayer's argument and reduce the site value to 2.0 acres, then the topography depreciation would also have to be adjusted or removed.

Example

	<u>No. of Acres</u>	<u>Unit Price</u>	<u>Depreciation</u>	<u>Appraised Value</u>
Homesite	2.0	\$15,000		\$30,000
Rear	3.0	\$ 5,000	50%	<u>\$ 7,500</u>
				\$37,500
				<u>\$ 6,000</u>
				\$43,500

It appears that the Town addressed the Property's topography one way (50% depreciation) and the other lots in a different manner (acreage adjusted, no depreciation). The end result appears to be consistent, i.e. site values of \$30,000 to \$45,000. The Property's \$30,000 site value is at the low end and supports the Taxpayer's assertion that its topography was on par with one lot and poorer than the other two.

3) No market evidence was presented to show that the land value was excessive.

Buildings

The Taxpayer provided photographs and described the maintenance history of the Property. It was evident to the board that the exterior of the improvements and the grounds in general had received minimal regular maintenance. A review of the categories contained in the Marshall Valuation Service manual published by Marshall and Swift for indoor tennis clubs causes the board to be of the same opinion as the Town when it revised the

classification of the building to a "low cost" class "S" structure. Combining this classification with the fact that the improvements have received little updating since its construction leads the board to find the effective age of the improvements to be 12 years. The Marshall Valuation Service provides life expectancy guidelines for various classes of properties. An indoor, class "S", low-cost facility has a typical building life of 30 years. Using the depreciation chart in the Marshall Valuation Service manual, the board finds an appropriate physical depreciation factor of 26% for the building.

The board has also considered the special-purpose nature of the building. Frequently the design of special-purpose structures limits them to a single use. "The functional utility of a special-purpose building depends on whether there is continued demand for the use for which the building was designed. When there is demand, functional utility depends on whether the building conforms to competitive standards." The Appraisal of Real Estate at 270 (10th Ed. 1991). The board finds that the building under consideration has some demand as it is being used. However, the board also finds that the building does not meet some current competitive standards for indoor tennis facilities. The lack of multiple locker rooms, fitness equipment, aerobic workout areas, lounge with food service capabilities, or other exercise options reduce the competitiveness of this building when compared to other indoor racquet sports facilities. For these reasons, the board finds that a 10% adjustment for functional depreciation is warranted.

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Applying the adjusted factors for physical and functional depreciation to the Town's initial building replacement value yields a revised value of

\$106,200 ($\$159,507 \times .74 \times .90$) (rounded). The board's finding of \$144,700 when equalized by the 1994 equalization ratio of 109% for the Town of Charlestown indicated an approximate market value of \$132,750. Based on its judgement and experience, the board finds this value to be reasonable. The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the Taxpayer paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

If the taxes have been paid, the amount paid on the value in excess of \$144,700 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 and 1996. 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 "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A

reconsideration motion is granted only if the moving party establishes: 1)

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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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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

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 L. Sussman, Agent for TSV Tennis, Inc.; Steven J. Snelling of TSV Tennis, Inc., Taxpayer; Douglas P. Webb, President of TSV Tennis, Inc.; and Chairman, Selectmen of Charlestown.

Date: May 22, 1997

Valerie B. Lanigan, Clerk