Primary Bank

v.

Town of Peterborough

Docket No.: 15143-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $406,300 (land $136,800; buildings $269,500) on a 1.9-acre lot with a commercial building (the Property). The Taxpayer also owns, but did not appeal, nine other properties in the Town with a combined, $5,551,200 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 was 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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property sold in 1995 for $195,000 with the purchase and sale

agreement being signed in November 1994;

(2) The Property was appraised for $295,000 including $98,604 for renovations for the new owners;

(3) starting in 1992 the Property no longer provided walk-up banking services but continued to house its real estate office and provide ATM and drive-up banking services until 1994;

(4) the presence of the ATM machine to be leased to the bank after the sale was a benefit to the new owners; and

(5) the Taxpayer stated that the other properties owned by the bank were either properly assessed or possibly also overassessed.

The Town argued the assessment was proper because:

(1) the equalized value for the Property is approximately $315,000;

(2) the Property has good access and visibility due to its Route 202 location;

(3) the canopies, underground tubes and drive-up windows still have some contributory value;

(4) the appraisal done on the Property indicates a value by the cost approach close to the equalized assessment; and

(5) the $98,604 renovation costs were for a specialized use and would be something less for a more typical purchaser.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $347,900 (land $136,800; buildings $211,100). This assessment provides an indicated market value of $269,700 by applying the Town's 1994 equalization

ratio of 1.29 ($347,900 ÷ 1.29).

In arriving at this decision, the board concluded the market value of the Property was $260,000 to $270,000 in 1994 and that the Property no longer had its highest and best use as a special purpose property as a bank. The board also considered and gave some weight to the sale price of the Property but considered the renovation cost for a dentist office to be excessive above what a more typical purchaser might need.

The Town had a revaluation in 1989 which used a market modified cost approach to estimate the replacement cost of the bank and special improvements and then applied appropriate depreciation to arrive at an estimated market

value. The Town reviewed the assessment in 1994 and decreased the replacement cost and increased the depreciation to attempt to recognize that the special purpose use of the bank in 1994 was in transition. The Town is to be commended for recognizing some adjustment is warranted. However, the board finds the depreciation was not adequate enough to offset the now largely obsolete specialized improvements of the bank. The board concludes that depreciation of 14% physical and 35% functional/economic obsolescence is more appropriate. Applying this depreciation results in the revised assessment of $347,900. It is clear from the Taxpayer's testimony that the Property's special improvements as a branch bank in 1994 no longer significantly contributed to the Property's market value. Any prospective purchaser of the bank for office use would place little weight on the special improvement features, and thus, the depreciation needs to recognize that obsolescence.

The board reviewed the April 1995 sale of the Property for $195,000. 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, the board finds the sale price possibly included certain considerations to not qualify the sale as entirely arm's-length. The Property was marketed through the bank's OREO management office. The bank and the Taxpayer avoided the normal market real estate commission fee by not having the Property marketed through a commercial realtor. The bank obviously wanted to liquidate the Property and thus, can be considered a highly motivated seller. While it is true that offsetting this motivation is the ability for the bank to arrange financing for a prospective buyer, these factors all result in the transaction being less than arm's-length. Further, the selling price appears to be somewhat influenced by the need for the purchaser, a dentist, to have fairly extensive renovations done for their specific use.

finds that while any prospective purchaser would need some renovation of the Property for commercial/office use, the dentist's use requiring the small examining rooms, specialized plumbing and other construction features specific to their trade results in renovation costs being abnormally high. The board has determined that approximately 35% to 40% of the dentist's renovation cost would be more typical for a regular office retrofitting. This equates to approximately $17.00 to $19.00 per square foot for renovations for this building. Based on the board's experience this is reasonable for office

type renovations[1]. Thus reducing the appraisal value of $295,000 by 35,000 to 40,000 results in a market value of approximately $260,000.

In conclusion, the market evidence related to the sale and renovation of the Property as adjusted above supports the revised functional and economic obsolescence the board has applied to the assessment.

If the taxes have been paid, the amount paid on the value in excess of $347,900 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. The Town of Peterborough in 1995 conducted a general reassessment, and therefore, pursuant to RSA 76:17-c, the board's ordered abatement applies only to the 1994 tax year.

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

[1] The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William M. Pierce, Agent for Primary Bank, Taxpayer; and Chairman, Selectmen of Peterborough.

Date: December 24, 1996

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Valerie B. Lanigan, Clerk

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