

Plaistow Bank & Trust Co.

v.

Town of Newton

Docket No.: 15161-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$359,000 (land \$72,900; buildings \$286,100) on a .64-acre lot with a 1-1/2 story bank building (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 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 traffic count on Route 108 by the Property is 3,700 to 4,100 cars per day;

(2) the trend of the banking industry was toward smaller facilities utilizing supermarket branches and ATMs;

(3) the Property was appraised on August 25, 1993 for \$160,000 by F & M Appraisal;

(4) around January 1995, the Property was offered for sale to the Town for \$150,000; the Town declined;

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(5) the Property was listed for sale in the spring of 1995 for \$169,900; the asking price was subsequently reduced to \$144,900 then to \$134,900; during this period five purchase-and-sales agreements were received ranging from \$80,000 to \$120,000;

(6) the Property was sold on October 31, 1996 for \$90,000; and

(7) the Town reduced the assessment to \$182,800 in 1996.

The Town argued the assessment was proper because:

(1) the Property was used as a bank until December, 1994; and

(2) the Town's assessor used the cost approach to value the Property according to standard assessing guidelines.

After the hearing, the board viewed the Property. The view consisted of driving around and viewing the exterior of the Property and reviewing the interior photographs submitted by the Taxpayer. In addition to the view of the Property itself, the board travelled along Route 108 to view the Property's neighborhood for several miles in each direction.

Board's Rulings

Based on the evidence submitted and the testimony given at the hearing and the subsequent view of the Property, the board finds the Property's assessment should be \$192,100 (land \$54,700; building \$137,400).

At the hearing, both parties testified that the economy in general in Newton, and specifically, along Route 108, was the primary factor in the diminishing value of real estate in the area. After the hearing, the board viewed the Property during the afternoon. The view substantiated the testimony of both parties. The Property's neighborhood is a mix of modest, older, residential dwellings and small, commercial operations. There did not appear to be any significant recent or ongoing development taking place in the immediate neighborhood. The Town testified that at one point in time, an interchange was planned that would have connected Interstate 495 with Route 108 in Newton. This interchange would have significantly increased the

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traffic count along Route 108 and the anticipation of this spurred some economic development. However, this highway construction plan was not implemented and no interchange was built. The Taxpayer testified that without the interchange the low traffic count of between 3,700 and 4,100 cars per day cannot sustain commercial development on Route 108. The Town concurred that there has been some business closures on Route 108 and that no new commercial development has taken place.

Additionally, at the time of this appeal, the banking industry in general was undergoing changes in marketing strategy. Banks were merging and consolidating their activities with the emphasis being on small, easily accessible branch offices rather than larger, stand-alone buildings. Indeed, a merger in 1994 of Family Bank and Plaistow Bank and Trust was evidence of this trend. The Taxpayer testified and the Town did not refute the fact that after the merger, the bank would have had 4 branches within a 5 mile area and

that prudent financial management would preclude maintaining all of these branches. After the merger, the bank closed the Property for these reasons.

Therefore, upon reviewing the assessment of the Property, the board finds that some adjustments for economic depreciation are warranted to the Property. The Taxpayer submitted an appraisal with an effective date of valuation of August 23, 1993. The appraiser states that the highest and best use for the Property is as an office space rather than as a bank. The board finds the appraiser's opinion reflects both the trends in the banking industry and the changes in the local economy since the building was constructed. While the building was still being used as a bank April 1, 1994, the market trends for such facilities were evident at the time and the Property would very likely not have sold for bank use.

Consequently, in arriving at a land value, the board has determined that a 25% reduction to the current assessment for economic depreciation is warranted due to the traffic count and the lack of significant commercial development in the area. This adjustment would apply to both the site value

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and the yard improvements such as paving and concrete. In the land portion, the calculation would be as follows: $\$72,900 \times .75 = \$54,700$. In determining the building value, the board has applied a 50% economic depreciation factor.

This adjustment considers both the special-purpose nature of the building as well as the general lack of other commercial development along the Route 108 corridor. The building is in some ways a special purpose building and has a reduced market in the neighborhood. The building portion of the assessment would read $\$304,400 \times .95$ (for physical depreciation) $\times .95$ (for functional

depreciation) x .50 (for economic depreciation) = \$137,400 (rounded).

Combining the two components of the assessment results in a total assessment of \$192,100 for the Property.

The Taxpayer requested the filing fee be refunded due to the Town maintaining a frivolous case. The board denies the request because the abatement was not ... "due to a clerical error, or a plain and clear error of fact, and not of interpretation...". RSA 76:17-b.

If the taxes have been paid, the amount paid on the value in excess of \$192,100 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 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 "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

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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, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Representative for the Taxpayer; and Chairman, Board of Selectmen for the Town of Newton.

Date: August 20, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" September 18, 1997 rehearing motion (Motion). The board denies the Motion as it did not state any "good reason" for granting it and the board clarifies some of the issues raised again by the Taxpayer. See RSA 541:3.

The assessment under appeal was as of April 1, 1994, at which time the Property was being fully utilized as a bank facility for which it was originally designed. The Taxpayer's agent wants the board to determine that the sale of the Property in October 1996 was conclusive evidence of the Property's market value as of April 1, 1994. The board finds a sale two and one-half years subsequent to the assessment date not to be conclusive evidence of the market value as of April 1, 1994. As the board had noted, the use of the Property continued as a banking facility until December of 1994. No one, including the Town, with the assessing responsibility on April 1, 1994 could have foreseen the sale two and one-half years later. Nor would it be

reasonable to assume the marketing mindset that perhaps existed two and one-half years later was applicable to a banking facility still in use through 1994.

On page 4 of the board's decision dated August 20, 1997, it is clearly stated that the "Town" shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. The Town must annually review its

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assessments and adjust those that have declined or increased more in value than values generally changed in the Town. RSA 75:8 states:
The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal ***.

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

The board recognizes that changes to the Property occurred in subsequent tax years and the board has reminded the Town of its obligation to perform its annual review.

The Taxpayer has 30 days from the date on this denial of its motion to appeal to the Supreme Court pursuant to RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Mark Lutter, Agent for Plaistow Bank & Trust Co., Taxpayer; and Chairman, Selectmen of Newton.

Date: October 21, 1997

Valerie B. Lanigan, Clerk

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