Robert E. Boisvert

v.

Town of Goffstown

Docket No.: 15232-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment as follows.

$324,000 (land $240,300; buildings $84,300) on Map 5/Lot 47, a 16.13-acre lot with commercial buildings; and

$194,100 (land $96,500; buildings $97,600) on Map 26/Lot 4, a 2.50-acre lot with commercial buildings (collectively known as the "Property").

For the reasons stated below, the appeal for abatements is granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or were 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 assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

(1) the Property should be assessed as one lot because the second lot is land-locked and is dependent on the first for access;

(2) there is limited access to the site due to a railroad right-of-way, a retention pond splits the site and there are steep slopes and ledge on the rear portion of the land;

(3) the Property contains four buildings, all of which are in fair to poor condition;

(4) at one time, the Property was declared an illegal junk yard by the Town, which reduces the Property's value; and

(5) based on a review of sales and income data, the Property's April 1994 market value was between $210,000 and $280,000.

The Town agreed that the Property should be considered as one lot and argued the combined assessments were proper because:

(1) the Taxpayer's comparables were foreclosure sales or properties that were not comparable to the subject;

(2) the Property's highest and best use is for future development; and

(3) comparable sales support the assessed values.

Board's Rulings

Based on the evidence, the board finds the Property's assessment to be $466,850, which when equalized by the 130% 1994 ratio, indicates a market value of $359,100. Subsequent to the hearing, the board took an exterior view of the Property. Neither the Town nor the Taxpayer were present at this view. The view enabled the board to be more familiar with the Property's location, access restrictions, topography and exterior condition of the buildings.

The board agrees with the parties that any prospective purchaser would likely view the lots as one property and, thus, has done so in arriving at its decision. In arriving at its decision, the board placed little weight on the Taxpayer's and the Town's comparable sales. Based on the Taxpayer's "Agent's" analyses, the Property had a market value of $210,000 to $280,000. This is an

unacceptable range. The Agent analyzed the Property via the sales comparison approach and the income approach. The board gives little weight to the sales comparison approach because the comparable properties were either not similar to the Property, were foreclosure or auction sales, or had significant differences in condition, size, access, zoning, location, etc. and because the

Agent did not perform any true valuation analysis. To the extent the 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 judgments. While the Agent submitted some information about the sales used, he did not present sufficient comparison between the sales and the Property (e.g., an adjustment grid comparing the five comparables to the Property with adjustments to the comparables as warranted). Likewise, the income approach could not be relied upon because the Agent did not present sufficient comparison between his six comparable leases and the subject. Further, the Agent argued the buildings were in fair to poor condition but did not perform a cost approach on the buildings or determine a land value based on vacant land sales.

The Town also failed to submit sufficient evidence in this appeal. The Town submitted sales evidence of superior lots and, like the Taxpayer, failed to make any adjustments to the sales for their superior location, access, etc.

However, based on its review of all the evidence received and more specifically on the view of the Property, the board finds that some adjustment to the assessment is required for the access issues the Property endures, specifically: (1) the angle of the access to the prime site combined with the curvature of Route 114 is difficult at best; (2) the separation of the prime site from the highway by the railroad right-of-way; and (3) the topography of the lot to the rear (slope and ledge). The board finds that a 10% market adjustment to the Property's total assessed value is reasonable given all of

the above factors and the board's experience and judgment.[1] Therefore, the board finds the proper assessment to be $466,850.

[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).

The board also calculated the two lots as one using the same adjustments as the Town applied for Lot 47 (see Table A attached). This exercise indicated a land value of $289,289, which when added to the Town's building values, indicated an assessed value of $471,200. While the board did not base its decision on this method, it did support the board's finding that some adjustment is warranted.

The Taxpayer argued that the Property's value may be reduced because it had been declared an illegal junkyard. No market evidence was submitted to support any reduction in value; therefore, no weight is given to this assertion.

If the taxes have been paid, the amount paid on the value in excess of $466,850 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, <u>not the date this decision is received</u>. 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 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 Mark Lutter, Representative for Robert E. Boisvert, Taxpayer; and Chairman, Selectmen of Goffstown.

Dated: January 21, 1997

Valerie B. Lanigan, Clerk

TABLE A

LAND DESC.	TOTAL LAND UNITS	UNIT TYPE	UNIT PRICE	INFL. FACTOR	S I	COND. FACTOR	ADJ.	SPECIAL LAND CALC.	TOTAL ADJ.	ADJ. UNIT PRICE	LAND VALUE
AUTO REPAIR	43560.00	SF	1.18	100	4	155	100	225=30=RRR	155	1.83	79,715
IND. LD DV	4.00	AC	51400.00	100	0	090	100	EXPNSN 125-30 RRR	090	42260.00	185,040
IND. LD UD	13.63	AC	4000.00	090	0	050	100	EXCESS	045	1800.00	24,534
TOTAL AREA	18.63									LAND VALUE	289,289