Colonial Mortgage, Inc.

v.

Town of Amherst

Docket No.: 15236-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $1,246,600 (land $345,600; buildings $901,000) on a 2.88-acre lot with a 15,218 square-foot office 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 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) in the 1994 time frame, office buildings were renting for $6.00 to $8.00 per square foot triple net and were selling for $25.00 to $40.00 per square

foot;

(2) the Property was approximately 50% occupied by the owner in 1994 and was available for lease at $7.00 to $8.00 per square foot triple net;

(3) the Property was overbuilt for its location;

(4) the Town applied a .75 economic factor to the Property but should have applied a .50 factor to be consistent with other commercial properties in the area;

(5) the Town has assessed the entire 2.88 acre lot at a primary site value; some of the acreage should have been assessed as rear land; and

(6) based on a sales-and-income analysis, the indicated market value of the Property is $600,000.

The Town recommended revising the assessment to $946,200 to reflect a 50% economic factor and argued the revised assessment was proper because:

(1) the Property has been listed for sale at $1,200,000; and

(2) comparable sales and comparable leases support the revised value.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $821,600 (land $221,000, buildings $600,600).

The board revised the land assessment to reflect the differing values allocated to the primary site, or baselot, and the rear land. The board considered the testimony of both parties regarding the area encumbered by the improvements. Data from the Property's assessment record card indicated an area of 28,900 square feet for paving and 7,609 square feet for the first floor of the building (15,218 ÷ 2). To these figures the board added

approximately 1,500 square feet for the finished landscaping around the building. Adding these three figures results in a total of 38,009 square feet for the encumbered area. The Town testified that the lot coverage ratio for the Property is 70%. Dividing the area of the encumbered land by the lot coverage ratio yields a figure of 54,299 square feet or 1.25 acres. This represents the area of the baselot or primary site. Using the Town's unit value of $120,000 per acre for the baselot indicates a value of $150,000 ($120,000 x 1.25) for the primary site. Following the Town's methodology for other similar properties, the remaining land of 1.63 acres should be classified as rear land and given a lower unit value. A review of the sales

in the Town's report revealed that Town sale #1 has a site configuration similar to the Property including a primary site and rear land in the same zoning classification. Utilizing the unit value employed by the Town, the board assigned a $1.00 per square foot value to the rear land. Applying this unit value to the rear land yields a final estimate of value for the total land area of $221,000.

The Taxpayer testified the .75 economic factor applied to the building value estimate should be .50 to correspond with other buildings in the neighborhood. The Town concurred and proffered a revised assessment card for the Property with an economic factor of .50. The board finds this adjustment to be the only building adjustment necessary. The revised building value becomes $600,600.

It is the board's opinion that the Property's original design and location make it more conducive to use as an owner-occupied building rather

than a rental property. Both the Town and Taxpayer submitted written evidence to support their testimony on the value of the Property. The parties used the income and sales comparison approaches to arrive at their valuation estimates. The board gave little or no weight to either income approaches submitted. The majority of the data was from towns other than Amherst. Additionally, the leased space was not similar to the Property in either area or design.

Similarly, the bulk of the data submitted by both parties in their sales comparison approaches was from outside Amherst. The size and number of adjustments required to compare the sales to the Property caused the board to have little confidence in the final value estimates by this approach.

If the taxes have been paid, the amount paid on the value in excess of $821,600 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

_____
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 Mark Lutter, Agent for Colonial Mortgage, Inc., Taxpayer; and Chairman, Board of Selectmen, Town of Amherst.

Date: February 13, 1997

_____
Valerie B. Lanigan, Clerk