

Milford Co-Op Bank

v.

Town of Amherst

Docket No.: 15495-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$440,900 on a 2.54-acre lot with a bank (the Property). For the reasons stated below, the appeal for abatement is denied. The board, however, adopts the Town's recommended \$350,700 adjusted assessment.

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 failed to carry this burden.

The Taxpayer argued the assessment was excessive, and it detailed those arguments in Taxpayer's Exhibit #3. The Taxpayer asserted the Property's market value, based on the income and comparable sales approach, was \$155,000 as of April 1994. In rebuttal, the Taxpayer argued the Town's sales were not

comparable.

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The Town recommended adjusting the assessment to \$350,700 to reflect the need for additional economic depreciation to the building.

The Town argued the adjusted assessment was proper because:

- (1) the base lot value was depreciated (x.75) for its topography;
- (2) the .50 economic adjustment reduces the building value to \$122,100;
- (3) given the existing economy, a buyer would most likely purchase this Property for owner occupancy;
- (4) the Property is located in a high traffic location (28,000 cars per day on Route 101 A); and
- (5) comparable sales along Route 101 A supported the revised \$350,700 value.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayer did not show overassessment. Nonetheless, the Town indicated that a revised \$350,700 assessment would be appropriate to reflect economic conditions.

This is a 2,280 square-foot branch bank with a vault, a safe deposit area, a drive-in and other typical bank features. It is open and fully operational. There was no evidence that the bank was not being used fully by the Taxpayer, and there was no evidence that there were any economic conditions that were adversely affecting the Taxpayer's use of the Property.

The Property is located on Route 101 A, with a traffic count of approximately 28,000 cars per day. The Property is on the fringe of the commercial/retail area. This area has generally experienced positive market demand and growth as shown by the Town's evidence. Because the Property has special features to operate as a bank and because of the location on a major thoroughfare, the board finds this is a very good bank location, and the Property's highest and best use is as presently used.

The board has included the above description because if we were to believe the Taxpayer, this Property was worth only \$155,000. As stated at the hearing, the board finds the Taxpayer's value opinion completely meritless.

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The Taxpayer did not present any credible evidence of the Property's fair market value. To carry its burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Taxpayer's evidence basically consisted of: 1) an income approach based on rents from other branch banks; and 2) a comparable sales approach, using five sales of branch banks from across the state. The Taxpayer's agent, however, did not perform any property-specific analysis. Rather, the Taxpayer's agent offered the board with the so-called comparable rents and sales, performed a broad-brush analysis and offered a \$155,000 value conclusion. The agent's work was inadequate. It is insufficient for any

taxpayer to simply submit data without performing sufficient analysis to adjust that data to the specific property. The Taxpayer's agent did not perform any analysis to show how the so-called comparables compared to the Property.

Assessments and market valuations must consider all relevant factors that affect value. The Taxpayer's agent failed to consider or analyze important factors. For example, the agent made no adjustment for the Property's major attributes such as its location on a major thoroughfare. Additionally, the Taxpayer's agent's used data from distressed banks or vacant banks in less desirable areas. This data had no application to this Property.

Common sense dictates that as banks are downsizing and closing branch offices, those with inferior locations or inferior buildings would be the first to close. This Property has a very good bank building and a very good location.

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To properly assess, all property must be valued at its highest and best use. The Property's highest and best use is as an owner-occupied bank. Therefore, the Taxpayer's analysis of this Property, as if it were a distressed, poorly located Property deserves no weight.

The board also finds the Town's assessor was very knowledgeable about the real estate market in this area. The assessor presented information to support the active land market in this area. We concur that the Town's evidence supports an active land market in this area. Moreover, the Town's comparable sales demonstrated that the Property's land had substantial value.

(Contrast that to the asserted \$65,000 land value by the Taxpayer's agent.)  
The Town did, however, recommend adjusting the assessment to reflect an economic adjustment. The board adopts this recommendation.

If the taxes have been paid, the amount paid on the value in excess of \$350,700 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. 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 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

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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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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Milford Co-Op Bank, Taxpayer; and Chairman, Selectmen of Amherst.

Date: December 23, 1996

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Valerie B. Lanigan, Clerk

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**Milford Co-Op Bank**

**v.**

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**ORDER**

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

The board also notes it could not accept the new information submitted by the Taxpayer concerning the land assessment. The new information should have been presented at the hearing.

TAX 201.37 (e) states, "rehearing motions shall not be granted to consider evidence previously available to the moving party but not presented at the original hearing \*\*\* ." The board did not ask the Taxpayer to submit anything after the hearing. Thus, the record was closed when the hearing ended.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I certify that copies of the within Order have this date been mailed, postage prepaid, to Mark Lutter, representative for the Taxpayer; and Chairman, Selectmen of Amherst.

Date: January 27, 1997

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Valerie B. Lanigan, Clerk

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