

David and Robert Townsend

v.

Town of Londonderry

Docket No.: 15748-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$492,600 (land \$143,000; buildings \$349,600) on a 3.05-acre lot with an industrial warehouse (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) a review of comparable leases suggests a market rent of \$3.50 per square foot and a review of comparable sales indicates a range of value of \$343,700 to \$372,300;
- (2) the income approach is the most reliable approach which indicates a value of \$365,300;
- (3) the Town has assessed the office area as 10% when in fact it is only 8%;

Docket No.: 15748-94PT

- (4) the Town assessed two 5,000 gallon propane tanks which are personal property;
- (5) the Property is disproportionately assessed when compared to comparable properties;
- (6) the Town's sales do not show the rents to support its per-square-foot value; and
- (7) the market value as of April 1994 was \$365,000.

The Town argued the assessment was proper because:

- (1) the subject is a single user, owner-occupied building and a comparison of sales of similar usage was utilized;
- (2) an April 1994 appraisal estimated the market value was \$500,000;
- (3) the Taxpayers' comparable sales are all investor-purchase-auction sales and are not comparable to the subject's usage;
- (4) the propane tanks are bolted onto cement poured slabs with underground piping to the building; and
- (5) the appraisal report supported the assessed value.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$431,650. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the

existing assessment process allocates the total value between land value and

building value. The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices. This assessment is based on a market value finding of \$445,000 equalized by the Town's 1995 ratio of .97 ($\$445,000 \times .97$).

The board was presented with all three approaches to value by the parties. The Town's assessment-record card arrived at the assessment by a market-modified cost approach. The Taxpayers' agent, Mr. Lutter, presented in Taxpayer Exhibit #1 both the sales and income approaches. The Town also submitted an appraisal report prepared by Charles R. Haven which also employed the sales and income approaches.

While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Appraisal and Assessment Administration at 108. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979). Given the evidence in this appeal, the board considered all three approaches but gave the most weight to the sales approach primarily because the Property is an owner/occupied-single-tenant type of building for which there existed reasonable comparables from which to derive an estimate of value. The board reviewed the Town's assessment-record card but finds that because the depreciation for the cost approach is estimated or

checked by either the income or sales approach it is further removed from the direct

Page 4
Townsend v. Town of Londonderry
Docket No.: 15748-94PT

market extraction and is given less weight. The board also reviewed the income approach as submitted by both parties and chose not to give that approach much

weight for several reasons: 1) as stated earlier, the Property is a owner/occupied-single-tenant type of building which is more likely to be owned rather than leased; and 2) the parties submitted various types of leases with differing provisions (gross rent, net rent, triple-net rent) and lacked adequate documentation for adjusting those rents to a triple-net basis.

Sales Approach

The board reviewed the sales and analysis of both Mr. Lutter and Mr. Haven and determined that generally the sales used by Mr. Haven were more comparable than those by Mr. Lutter for several reasons. Many of Mr. Lutter's sales were bank-related sales and, while he made an adjustment for that factor, those types of sales need not be used if adequate non-bank sales are available as there were. Second, Mr. Lutter's sales were generally multi-tenant type properties and in the case of comparable sale #2 actually an industrial condominium property. Again, when sales of similar owner/occupied-single-tenant properties exist, those sales should be used. The Town's four sales were of owner/occupied single tenant buildings and with the exception of sale #3 were non-bank related sales. Consequently the board finds the Town's four comparable sales to be the best beginning market data to analyze.

The board finds the Town's analysis of these four sales reasonable except for the lack of a time adjustment for sales prior to April 1, 1993. The board finds based on testimony submitted by Mr. Lutter and the board's

Page 5
Townsend v. Town of Londonderry
Docket No.: 15748-94PT

general knowledge and experience¹, Town's sales #1 and #2 should be adjusted at

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.

the rate of 1% per month declining to April 1993 to reflect the general trend in the market for these types of properties from 1991 to 1993. No evidence was submitted to justify any locational adjustment for Hudson versus Londonderry for these types of industrial properties. Revising the Town's adjusted values per square foot, for sales #1 and #2, the board concludes that a correlated price per square foot for the Property of \$31.00 is reasonable. The board gave most weight to comparables #3 and #4 because they are located in Londonderry and the Town's adjustments for the bank-sale condition of comparable #3 of 10% and the improvement's differences of 25% for comparable #4 appear reasonable based on the evidence and photographs submitted. Applying this price per square foot to the building's 14,320 square feet provides an indicated market value of \$442,920 or \$445,000 rounded. Based on this indicated market value finding the board concludes the proper assessment, as stated earlier, to be \$431,650.

Mr. Lutter presented the argument that the propane tanks assessed to the Taxpayer in the amount of \$10,400 were not taxable because they were not owned by the Taxpayer and were personal property not real estate. The board agrees with Mr. Lutter's contention. These propane tanks, based on the evidence and the photographs submitted, are the common "bullet" tanks that different companies supply to commercial/industrial properties. The board finds these

Page 6
Townsend v. Town of Londonderry
Docket No.: 15748-94PT

are personal property and have not become real estate as fixtures. The board's value conclusion of \$445,000 inherently does not include the tanks because it is based on sales of real estate and not personal property.

42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

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 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

Page 7
Townsend v. Town of Londonderry
Docket No.: 15748-94PT

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for David and Robert Townsend, Taxpayers;

and Chairman, Selectmen of Londonderry.

Date: October 28, 1996

0006

Valerie B. Lanigan, Clerk