

108 Realty Trust

v.

Town of Newton

Docket No.: 15822-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$597,600 (land \$103,300; buildings \$494,300) on a 1.30-acre lot with two commercial buildings totaling 13,803 square feet (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) based on the income and comparable sales approaches, the Property's market value is estimated at \$315,000;

(2) the traffic count by the Property of 3,700 cars per day is low to support the commercial development; and

(3) the Town's replacement cost method provides no support for the improvements' depreciations or the land value.

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The Town argued the assessment was proper because if the total area of the building inclusive of basement area is used, the assessment per square foot is more in line with the sale prices per square foot submitted by the Taxpayer.

Following the hearing and after notification of the parties, the board viewed the Property and the neighborhood on its own.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$393,200 (land \$82,500; buildings \$310,700). In short, the board finds the combination of the evidence submitted at the hearing relative to the economic difficulties with the Property and the board's view of the Property resulted in the board revising the depreciations on the assessment-record cards as follows.

<u>Descr.</u>	<u>Card-Sect. #</u>	<u>Repl. Cost</u>	<u>Phys. Dep.</u>	<u>Func. Dep.</u>	<u>Econ. Dep.</u>	<u>Value</u>
Rest. 1st fl	1-1	\$149,947	x .85	x .75	x .75	\$ 71,700
Rest. 2nd fl	1-2	\$104,202	x .85	x .60	x .75	\$ 39,850
Retail	1-3 and 4	\$111,989	x .85	x .75	x .75	\$ 53,550
Retail (Gym)	2-5	\$144,191	x .85	x .75	x .75	\$ 68,950

Basement	2-6	\$107,211	x .85	x .50	x .75	\$ 34,200
Rear Retail	3-1	\$ 93,520	x .70	x .50	x .75	\$ 24,550
Basement	3-2	\$ 52,240	x .70	x .50	x .75	\$ 13,700
Garage	3-3	\$ 16,090	x .70	x .50	x .75	\$ 4,200
Site value \$68,000 x .75 economic adjustment =						\$ 51,000
Paving \$15,300 x .75 economic adjustment =						\$ 11,500
Rear land						<u>= \$ 20,000</u>
<b>Land and Building Value</b>						<b>\$393,200</b>

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Based on the income information submitted by the Taxpayer and the board's view of the Property and the neighborhood, the board finds the replacement cost used by the Town needs to be adjusted by a 25% economic factor. As testified to by the Taxpayer, the Property was built at the peak of the market in anticipation of increased traffic on Main Street from an interchange on Interstate 495 that was never constructed. The lack of significant other commercial development in the neighborhood, the low traffic count by the Property and the general overbuilt nature of the Property collectively result in this economic adjustment of 25%.

On the view the board noted that all the buildings suffered greater physical depreciation than that shown on the property-record card. Consequently, the board has revised the physical depreciation based on its experience and judgement<sup>1</sup>. The board also noted on the view some additional

<sup>1</sup> The agency's experience, technical competence, and specialized knowledge

functional depreciation was warranted. Specifically, the front building's basement area, due to poor access and utility, does not capture as much value as the Town had estimated it contributed. The board has also significantly adjusted the depreciations on the rear building primarily due to its poor physical condition for its age, its limited visibility from the road, and consequently, its limited utility as retail space.

Economic depreciation has also been applied to the site value and the value of the paving. This is appropriate because the developed portion of the Property is overbuilt for the market, and thus, any development costs associated with that construction would not be fully captured in the Property's market value.

While the board considered and gave significant weight to the evidence submitted by the Taxpayer, the board does not find the value conclusion of \$315,000 to be conclusive. This Property, despite all its problems, is likely

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to be marketed not solely on its potential for producing an income stream but for the ability for a portion of it to be owner-occupied. In the board's experience, owner-occupied properties sell for more than the income approach may fully recognize. Further, the board generally recognizes the direct capitalization approach may not fully capture the present worth of any future value for this Property if economic conditions improve. Lastly, while it has not a significant value, the Taxpayer's income approach does not reflect any

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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).

additional value that the undeveloped land of this 14.3 acre tract may contribute.

The board finds the Town's inclusion of the basement square footage in its calculations relative to assessment per square foot and sale prices per square foot is not appropriate. If the basement areas were of leasable quality and utility then such a calculation might be appropriate. However, based on the testimony and the view, the board finds the basement areas have minimal contributory value and that most comparisons to sale prices should be done on the leasable first and second floor areas of the Property.

Lastly, the board recognizes that this is a significant adjustment from the Town's assessed value. However, the board is convinced based on its view that the Property was significantly overassessed based on what it could be marketed for as opposed to what it cost to construct in the 1980s.

If the taxes have been paid, the amount paid on the value in excess of \$393,200 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;

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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

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Paul B. Franklin, Chairman

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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

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Valerie B. Lanigan, Clerk