

Ernest F. Dupuis, Jr.

v.

Town of Tamworth

Docket No.: 15874-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessments of \$272,300 on Lot 42, a 1.25-acre lot with a commercial building containing a warehouse and residence (the Vacant Lot); and \$69,900 on Lot 43, a vacant, 16-acre lot (the Improved Lot). 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 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 Taxpayer carried his burden and proved disproportionality.

The Taxpayer argued the Improved Lot's assessment was excessive because:

- (1) the rear of the lot (160 from the road) is unusable due to ledge, boulders and topography (The Town used an average depth of 200.);
- (2) the land assessment was not consistent with the land assessment on the Tamworth Market Place;

- (3) the Market Place was assessed with the same physical depreciation and economic depreciation despite differences in building type and vacancy;
- (4) the income statement demonstrated overassessment;
- (5) in 1993 the manager entered into an option with the Taxpayer to purchase at \$275,000; and
- (6) the units were only 36% occupied.

The Taxpayer argued the Vacant Lot's assessment was excessive because:

- (1) the lot does not front the highway, which adversely affects visibility and access (The lot is restricted to one access point.);
- (2) the lot has only one area (1 acre) that may be developed due to the poor land quality and topography;
- (3) the lot was worth \$20,000; and
- (4) it was overassessed compared to a comparable property.

The Taxpayer stated the combined assessment should have been \$275,000.

The Town argued the Improved Lot's assessment was proper because:

- (1) the depth was a calculated depth not an actual depth;
- (2) the Market Place assessment was based on the market's rental performance, and the physical depreciation was based on observed depreciation;
- (3) the building's cost was based on average mini-warehouse; and
- (4) the option was not based on exposure to the market.

The Town argued the Vacant Lot's assessment was proper because:

- (1) it was consistent with other vacant land sales with most of the value in one site that may be developed;
- (2) it was based on the revaluation sales analysis; and

(3) the Taxpayer's comparable is limited by guardrails, soil types and brook, justifying the higher topography adjustment.

Board's Rulings

Improved Lot

Based on the evidence, we find the proper assessment to be \$248,450 (land \$59,150; buildings \$189,300). This assessment is arrived at by applying a 10% topography adjustment to the lot value and 10% functional depreciation to the building improvements to account for the lack of water and electricity to the individual rental storage units.

The board was presented with inconclusive market evidence in this case to arrive at an estimated market value for the Improved Lot. The board reviewed and gave some weight to the income information submitted by the Taxpayer. However, the board finds the Town had already adjusted the mini-warehouse improvements on the Property by 50% to recognize the overbuilt nature of the project and that this adjustment reasonably comports with the Taxpayer's income information and testimony. The board reviewed the replacement cost manual used by the Town (Marshall and Swift Valuation Service) and notes that the description of an average steel mini-warehouse includes water and electric service for each warehouse. Since the Property lacks those improvements, as noted by the Taxpayer, the board finds that 10% functional depreciation should be applied to account for the lack of these services.

The Taxpayer did not submit but testified to the existence of a lease with an option to purchase the Property with the current manager for \$275,000. The board considered this market evidence but gives it little weight for

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several reasons: 1) the document was not submitted; 2) the financial arrangements between the ongoing manager and the owner/taxpayer of the Property could possibly include other considerations not fully described to the board; 3) no evidence was submitted as to whether the \$1,500 lease provision was market rent; and 4) the option to purchase between the manager and the Taxpayer had not been exposed to the open market.

Vacant Lot

Based on the evidence, the board finds the proper assessment on the vacant lot to be \$50,600. The board finds the Taxpayer raised several factors that the Town did not adequately consider. Specifically, the majority of the Property fronts on a limited access highway with the Taxpayer only having one right of access. The Town used a frontage method (using the entire frontage of the Vacant Lot) to assess the Vacant Lot. While the Town stated it attempted to arrive at a site value through its topography adjustments, the board finds that it is more proper to value the lot as if it has only one point of access (equivalent to 200 feet of frontage) and adjust the topography and the excess and undeveloped factors for that amount. Further, due to the state owning and controlling most of the trees that block the visibility of the road at the one access point and due to the rocky terrain of the Property, the board determines the balance of the land along Route 16 should be placed in a good/rear category. In summary, the board finds the land assessment to be calculated as follows (the excess frontage factors are derived from the N.H. Appraisal Manual used by the Town for all properties).

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Frontage		200'
Unit Price	x	\$250
Topography	x	.90
Excess adj.	x	.90
Undeveloped adj.	x	<u>.70</u>
	=	\$28,350

Second Frontage		53'
Unit Price	x	\$250
Topography	x	.80
Excess adj.	x	.90
Undeveloped adj.	x	<u>.70</u>
	=	\$6,700

Good Rear Acreage		6.64
Unit Price	x	\$2,000
	x	<u>.65</u>
	=	\$8,650

Fair Rear Acreage		5
Unit Price	x	\$2,000
	x	<u>.50</u>
		\$5,000

Poor Rear Acreage		3.2
Unit Price	x	\$2,000
	x	<u>.3</u>
	=	\$1,900

Total Land Value		= \$50,600
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The board also reviewed the sales information submitted by the Town of nearby parcels used to establish the \$250 base price during the reassessment. We find that the adjusted value of \$50,600 is reasonable in light of these sales and in light of the physical and legal constraints of the use of the Vacant Lot.

If the taxes have been paid, the amount paid on the value in excess of \$248,450 for Lot 42 and \$50,600 for Lot 43 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. Page 6
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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 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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ernest F. Dupuis, Jr., Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Tamworth; and Chairman, Selectmen of Tamworth.

Date: October 24, 1996

Valerie B. Lanigan, Clerk

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