

Rodgers Brothers Inc.

v.

Town of Londonderry

Docket No.: 16058-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the following 1995 assessments (total \$1,452,700).

Lot No.	Assessment	Description
4	\$143,200	vacant, 2.8-acre lot
7	\$163,000	vacant, 3.35-acre lot
8	\$176,700	vacant, 3.73-acre lot
9	\$146,800	vacant, 2.9-acre lot
10	\$145,400	vacant, 2.86-acre lot
11	\$142,800	vacant, 2.79-acre lot
12	\$191,800	vacant, 4.15-acre lot
13	\$343,000	a 17.5-acre lot with a shop

The "Properties" are mainly classified as industrial lots. For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were

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,

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the Taxpayer must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessments were excessive because:

- (1) the total assessments were approximately twice what the Taxpayer paid to repurchase the Properties from a party who had purchased the Properties from the Taxpayers and who had given the Taxpayers a purchase-money mortgage;
- (2) the per-acre value was excessive;
- (3) the Properties have been listed and marketed since 1994, and only one has sold (The realtor stated that the listing prices were too high and that lower listing prices would enhance the salability of the Properties.);
- (4) lot seven, which was listed for \$164,900, sold for \$140,000 in April 1996 (\$41,800 per acre);
- (5) there were several lots in this area that were vacant; and
- (6) excepting lot 13, the assessments should have been \$35,000 to \$40,000 per acre.

The "Town" argued the assessments were proper because:

- (1) the Properties have good access to Manchester and the airport;
- (2) the Town's comparables supported the assessments;
- (3) the planned airport expansion would have a positive effect on land values

in the area;

(4) the Properties' listing prices demonstrated what the Taxpayers thought the lots were worth; and

(5) the assessments fall within a reasonable range of market value.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not show the Properties were overassessed.

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The board begins by admitting that this is a close case. Our instincts indicate that the Properties were probably slightly overassessed. However, we are bound by the requirement that the Taxpayer prove overassessment. We find the Taxpayer did not present sufficient evidence to prove overassessment.

Following the hearing, the board drove out to view the Properties and the Town's comparables. Our initial drive by of the comparables led us to surmise that the Properties had inferior locations compared to the comparables. However, after taking the somewhat circuitous route from the airport to the Properties, we discovered that the Properties have a good location and good curb appeal. Specifically, while the access to the airport may be circuitous, the access to the highway and Manchester is good. Moreover, the Properties are in a subdivision that has many good industrial buildings at the entrance of the subdivision, and this would give a buyer confidence about the Properties' locations and the quality of the subdivision itself. Moreover, excepting lot 13, the Properties are easily developable

sites that have already been cleared and are very flat. Therefore, the positive attributes of the subdivision need to be counterweighed against the somewhat inferior location of the Properties as compared to the Town's comparables.

In terms of market information, the board makes the following observations.

1) The Taxpayer did not present sufficient market information for the board to find the Taxpayer carried its burden. The Taxpayer's comparables were not admitted because the Taxpayer did not renotify the Town in accordance with TAX 201.33 (b) and TAX 201.35 (a). While the Town did not perform any market analysis, it did submit two sales, which the board also viewed. Again, while there remains a question about the locational superiority of the comparables, the sales prices certainly provide general support for the Properties' assessments.

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The Taxpayer's repurchase of the Properties, does not provide a valid indication of market value. The Taxpayer has the burden to show that a particular sale is a market sale, see Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253, 255-56 (1994), and the Taxpayer did not prove that its purchase of the Properties was a market transaction. Specifically, the Taxpayer repurchased from the Taxpayer's grantee and mortgagor because the grantee/mortgagor could make the project work. This cannot be considered a representative market transaction.

The Taxpayer testified that lot 7 sold in 1996 for \$140,000. The Taxpayer asserted this sale demonstrated the Properties' values. While the

lot 7 sale certainly raised a legitimate question about the Properties' values, the board concluded it could not rely on this one sale for establishing all values. The lot 7 sale was an abutter sale, which could have adversely or positively affected the sales price. However, the board did not receive sufficient information to draw a conclusion on that point. Additionally, the lot 7 purchaser intended to relocate a paper street, and this could have adversely affected the value or it could not have had no impact. Furthermore, the Town questioned whether the lot 7 sale was a reduced price simply to generate some cash flow for the development to allow the Taxpayer to maximize the sales prices on other lots. All in all, without supporting the lot 7 sale with other sales, the board could not give the sale conclusive weight.

Another issue that the board struggled with was the Taxpayer's realtor's letter that described the marketing efforts and listing prices. Again, this certainly raised questions about the assessments, but the board could not find that evidence conclusive.

In conclusion, the board denies the appeal based on the Taxpayer's burden of proof. As we stated earlier, we have some doubts about whether the assessments are proper, but we did not receive sufficient evidence to give us confidence in lowering the assessments.

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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 Rodgers Brothers Inc., Taxpayer; and Chairman, Selectmen of Londonderry.

Date: April 25, 1997

Valerie B. Lanigan, Clerk

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