

Remi and Cecile Fortin

v.

Town of Londonderry

Docket No.: 16105-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$1,337,500 (land \$207,400; buildings \$1,130,100) on a 10.5-acre containing two residences and six multi-tenant truck terminal/warehouse buildings (the Property). The Taxpayers also own, but did not appeal, another property in the Town assessed at \$434,100. 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 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) a report prepared by Mr. David Irwin indicates a market value of \$1,042,750 based on the three approaches to value;
- (2) many of the buildings were constructed from demolished buildings (recycled building materials) which diminishes the desirability of the units and has been a factor in the vacancy of the units;

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- (3) the site has only on-site septic facilities which limits the type of tenants that could occupy the units;
- (4) despite on-site management and advertising, the vacancy history has been in the 20% - 30% range due to the quality of the buildings, minimal septic facilities and off-main-road location; and
- (5) the Town's appraisal used primarily 1997 market data for a 1995 market value finding without a time adjustment.

The Town argued the assessment was proper because:

- (1) an appraisal prepared by Charles Haven estimated the 1995 market value at \$1,350,000; and
- (2) truck terminal properties such as the subject generally have a higher land-to-building ratio to facilitate trailer storage; the rents and sales of truck terminals are higher than typical industrial/warehouse properties.

Following the hearing the board viewed the Property from its exterior and viewed the neighborhood.

Board's Rulings

Based on the evidence, the board finds the proper assessed value to be \$1,224,700. This is based upon a market value finding of \$1,262,600 and the Town's 1995 equalization ratio of .97 ($\$1,262,600 \times .97$).

In valuing real estate for property tax purposes, it is to be valued at its highest and best use. Steele v. Town of Allenstown, 124 N.H. 487, 490 (1984). Based upon the evidence and the board's view, the board has determined that the Property, to be valued at its highest and best use, should be valued as two economic units. One economic unit includes all the commercial uses and the adjacent larger dwelling at 572 Mammoth Road (Residence "F"), and the second economic unit is the dwelling at 570 Mammoth Road (Residence "H"). Based on Residence F's proximity to the commercial uses of the Property, the board determines it would not have a higher value if subdivided as a separate residential property from the commercial portion of the Property. Rather, we find that if the commercial property were to be

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sold, its value would be maximized by selling Residence F with it to be used as the commercial owners' residence. In contrast, however, Residence H has enough frontage, acreage and distance from the commercial portion of the Property to achieve higher value as a legally separate lot.

In determining the value of the two economic units, the board reviewed the three approaches to value in determining which approaches were most applicable to the two economic units.

There are three approaches to value: 1) the cost approach; 2) the comparable-sales approach; and 3) the income approach. The Appraisal of Real Estate at 71 (10th Ed. 1991).

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).

Commercial Economic Unit

For the commercial economic unit including Residence F, the board finds the income approach to be the most applicable approach and indicator of value.

This portion of the Property, consisting of the truck terminal uses and associated residence, would be viewed by an owner/investor for the income it could generate. Thus, the capitalization of the income stream provides the most accurate measure of value of this unit. The board reviewed and considered the Town's argument and evidence relative to sales of truck terminals. While the sales approach for some truck terminals may be an appropriate approach by which to value those properties, we find the Town comparables are more modern, generally in better locations and have less of a hodgepodge layout than the Property.

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Consequently, we find that those sales do not provide a good indication of market value for this older, more homegrown type of truck terminal.

The board extensively reviewed the income estimates submitted by both parties, the actual income of the Property and the testimony of the Property owners' daughter/manager, Ms. Keefe. The board finds it is difficult to definitively determine rents for the various commercial buildings given the mixed manner in which the actual leases have been structured. Nonetheless, based on the testimony of Ms. Keefe, the board is convinced the Property is being as prudently and aggressively managed as possible. Thus, the board

(Taxpayers' Exhibit 1)

Two Residence's Income	- \$ 24,000
Potential Gross Income Attributable to Truck Terminal	\$ 206,675
Vacancy Rate 20%	x .80
Effective Gross Income	\$ 165,340
Management and Replacement for Reserves %5	x .95
Net Operating Income	\$ 157,073
Capitalization Rate (.11375 + effective tax rate of .0362)	÷ .15037
Indicated Market Value	\$1,044,600 (rounded)

Estimated Market Value of Residence F

Gross Potential Income	\$ 18,000
Vacancy Rate 5%	x .95
Effective Gross Income	\$ 17,100
Expenses (Management and Reserves for Replacement) 5%	x .95
Net Operating Income	\$ 16,245
Capitalization Rate	÷ .15037
Indicated Market Value	\$ 108,000 (rounded)

Estimated Market Value of Residence H Economic Unit

The record contains 3 separate indications of value relative to this residence:

- 1) the Town's assessment of \$97,200, inclusive of house, garage and shed, but exclusive of any land value;
- 2) Mr. Irwin's cost approach of \$92,509, inclusive of house, garage and shed but exclusive of land value; and
- 3) Mr. Irwin's market approach estimate of \$99,900 to \$104,000 contained in a realtor's comparative listing analysis.

The board considered and gives weight to all three indications of market value. However, the board finds that both the Town's and Mr. Irwin's cost approach may overstate the contributory value of the buildings (especially the

oversized garage) and do not include any separate lot value. The board has estimated a lot value based on the evidence and the board's general knowledge and experience of the Londonderry market at \$30,000 to \$35,000.²

Consequently, the cost approaches by both parties indicate a total market value with land of \$120,000 to approximately \$130,000. The board finds Mr. Irwin's market approach understates Residence H's market value and may not reflect the additional value of the oversized garage and shed.

Based on these 3 indications of value, the board concludes a retail market value of Residence H subdivided on its own lot with the garage and shed would be approximately \$115,000. However, as of April 1, 1995, Residence H was not a subdivided parcel. The board has estimated the retail market value needs to be reduced by approximately \$5,000 to account for subdivision costs.

Consequently, the board concludes the contributory market value of Residence H, as is, is approximately \$110,000.

Summary of Market Values

Truck Terminal	\$1,044,600
Residence at 572 Mammoth Road	\$ 108,000
Residence at 570 Mammoth Road	<u>\$ 110,000</u>
Total	\$1,262,600

Applying the Town's 1995 equalization of 97% results in a proper assessment of \$1,224,700.

If the taxes have been paid, the amount paid on the value in excess of \$1,224,700 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

² 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. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996 and 1997. 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.
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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 David Irwin, Agent for Remi and Cecile Fortin, Taxpayers; and Chairman, Assessors of Londonderry.

Date: December 2, 1997

Valerie B. Lanigan, Clerk

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