

Herbert S. Hardman

v.

Town of Milford

Docket No.: 16109-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$442,900 (land \$206,500; buildings \$236,400) on a .84-acre lot with a two-family dwelling and a three-family dwelling (the Property). The Taxpayer also owns, but did not appeal, four other properties in the Town with a combined, \$1,202,900 assessment. 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) the Property was purchased for \$125,000 in January 1995 in an arm's-length transaction;

(2) a transaction is better than an appraisal;

(3) financing for multi-family properties (more than 2 units) is available

only as a commercial loan;

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(4) some of the apartments needed repair;

(5) comparable sales indicate, and listings support, the sale price of the Property; and

(6) the market value as of 4/1/95 was \$125,000.

The Town argued the assessment was proper because:

(1) properties in the commercial zone of Elm Street have been assessed consistently using the 400 condition factor;

(2) the purchase price is not indicative of market value due the estate settlement and intent to liquidate the estate expeditiously;

(3) the seller was not a typical investor/owner;

(4) the neighborhood is in transition as evidenced by the Rite-Aid sales including the single-family dwellings on the lots sold; and

(5) the current assessment is the appropriate assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$186,300. This assessment is based on a market value finding of \$135,000 and the Town's 1995 equalization ratio of 1.38 ($\$135,000 \times 1.38$).

This market value finding is based on the following summary of findings:

1) the sale price of \$125,000 was considered and given some weight but was not solely conclusive of market value; 2) sales and listings of other multi-family

homes support a lower assessment; 3) the Town's sales (Rite-Aid assemblage) represent a unique market and cannot be given wide attribution in valuing other sites; and 4) the Property has some deferred maintenance, especially the three-family dwelling.

The board finds the sale price of \$125,000 of the Property in January of 1995 is some indication of its market value. However, the board does not find it conclusive evidence. The Property was sold to settle an estate. Evidence was submitted, however, that the estate actively listed the Property through a real estate agent at a price that was felt to be reasonably reflective of its market value. However, the estate did accept the Taxpayer's initial offer

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after the estate's counter offer was refused. Further, based on the testimony of Mr. Hardman, it appears that Mr. Hardman is in the business of acquiring and operating income-producing property and is looking to buy at a reasonable price. Based on this marketing scenario, the board concludes \$135,000 is more reflective of market value than the actual sales price.

The board finds the various listings of similar properties submitted by the Taxpayer and comparable sales of similar multi-family properties indicate that the assessed value is excessive. Further, these sales, in a general fashion, support the board's market value finding of \$135,000.

The board finds the sales involved in the Rite-Aid assemblage are not reflective of the general market that would apply to the Property. The Rite-Aid sales were an assemblage of three separate lots further to the west of the Property on Elm Street to provide a site for a new Rite-Aid store. These properties were not exposed to the general market. Rather, the owners were approached directly by representatives of Rite-Aid to sell their properties.

The board finds these sales are not arm's-length transactions as the purchaser was unduly motivated to assemble land in that area for their specific needs. See The International Association of Assessing Officers, Property Appraisal and Assessment Administration 80 (1990).

Evidence was submitted that the Property had deferred maintenance that needed to be addressed to make the three-family structure rentable at the time of the sale. This evidence is supported by one board member's exterior view of the Property subsequent to the hearing. Even though some of the deferred maintenance submitted in Taxpayer's Exhibit #3 had occurred at the time of this view, it is still evident that the three-family unit was significantly inferior in condition to the two-family structure. While the Town had applied significant depreciation to the structure, based on the evidence and view, the board finds it is reasonable that additional depreciation should have been applied to reflect the building's condition, utility and marketability.

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The Town should in carrying forward the board's 1995 finding to 1996, make good-faith adjustments to the board's market value findings considering the approximately \$20,000 of improvements and repairs that occurred subsequent to the sale.

If the taxes have been paid, the amount paid on the value in excess of \$186,300 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 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; 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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark D. Fernald, Esq., Counsel for Herbert S. Hardman, Taxpayer; and Chairman, Selectmen of Milford.

Date: April 11, 1997

Valerie B. Lanigan, Clerk

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Recertification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark D. Fernald, Esq., Counsel for Herbert S. Hardman, Taxpayer; and Chairman, Selectmen of Milford.

Date: April 15, 1997

Valerie B. Lanigan, Clerk

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