

Eck-Bro Company

v.

Town of Merrimack

Docket No.: 16161-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessments of \$214,600 on a lot located at 550 Daniel Webster Highway and \$95,100 on a lot located at 552 Daniel Webster Highway (the Properties). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Properties are not located near a full interchange of the F.E. Everett Turnpike;

- (2) the traffic count is relatively low due to the location; and
- (3) based on an appraisal, the value of 550 Daniel Webster Highway should be \$144,000 and 552 Daniel Webster Highway should be \$81,000.

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The Town argued the assessment was proper because:

- (1) the appraisal submitted by the Town's appraiser supported the current assessment;
- (2) the comparable sales used by the Taxpayer's appraiser and the adjustments made to them were inappropriate; and
- (3) the Taxpayer had not carried the burden of proof.

Board's Rulings

The board held a hearing on June 17, 1997, to hear testimony and receive evidence concerning the assessments under appeal and also took a view of the Properties on June 19, 1997. A review of the evidence submitted, the testimony presented and the view of the Properties has caused the board to find that the Properties were not disproportionately assessed.

The Taxpayer has the burden of proof to show that the Properties were disproportionately assessed. The Taxpayer, through its agent, based the appeal on two appraisals that were submitted to the board. In the appraisals, the appraiser used two recognized appraisal approaches -- the sales comparison approach and the income approach -- to estimate the value of the Properties. The board, however, finds the comparable sales chosen and the methodology

employed by the appraiser did not convince the board that the assessments were incorrect. A review of the two approaches and the Taxpayer's appraiser's methodology will address the board's concerns.

Sales Comparison Approach

The sales comparison approach was used by the appraisers for both parties to estimate the value of the land for each of the Properties.

Because there was conflicting testimony between the Town and the Taxpayer concerning the comparables sales employed by the Taxpayer's appraiser and the Town's appraiser, the board took a view of the Properties as well as the comparable sales employed by both parties. A review of the Taxpayer's comparable sales is as follows.

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Comparable Sale L-1

After the view, the board agreed with the Taxpayer's appraiser that this comparable sale was in a location that was superior to the Properties and required an adjustment. The board assumes the 30% location adjustment was based on the appraiser's experience and knowledge of the area as no information or testimony was given to support the size of this adjustment. The Town testified that this lot needed substantial site work and should have had a positive adjustment for this inferior characteristic. The Taxpayer's appraiser did not refute this assertion made by the Town. The board found on its view that comparable sale #1 had sloping terrain and that an adjustment for physical features as asserted by the Town may have been warranted. A nominal 15% positive adjustment for physical features would bring the adjusted

price per acre, as utilized by this sale, to between \$95,000 and \$100,000. Although the Taxpayer's appraiser utilized values on a front-foot basis as well as a price-per-acre basis, the board has used the price-per-acre basis. The Taxpayer's appraiser indicated on page B3 of his appraisal that the unit of comparison chosen by him is the sales price per acre.

Comparable Sale L-2

The board finds this sale consisted of a tract of land of substantially larger area than either of the Properties and should have had an adjustment for the size differential. The Taxpayer's appraiser made no adjustment for any size differential on the comparison grid. He did, however, make a 5% adjustment for some sloping topography. It appeared, during the board's view, that an adjustment for size differential was appropriate. The sloping nature of the topography was not so severe when considered with the overall lot size as to require an adjustment for this characteristic.

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Comparable Sales L-3 and L-4

Both of these sales were of improved properties. To extract a land value from the sales price of comparable sales L-3 and L-4, the Taxpayer's appraiser subtracted the value of the improvements using a percentage derived from the assessor's initial assessment. This methodology assumes the assessment is correct for each component of these properties. The board finds a more appropriate method to derive the land value would be to estimate the

cost of the improvements by using a recognized cost estimating service, such as Marshall and Swift, and then to subtract the value of the improvements from the total assessment. This more appropriate method was used by the Town's appraiser in estimating the improvements' value for one of the comparable sales used in his appraisal.

Moreover, judgement is required in any cost approach to ensure the costs less depreciation reflect the value the buildings contribute to a property. For example, L-4 included many buildings that may have had little to no contributory value.

As discussed by the Taxpayer's appraiser on page B3 of his appraisal report, a meaningful unit of comparison is the sale price per acre and the appraiser used this as the basis of his analysis. The range of adjusted unit values (approximately \$20,000 to \$80,000) is so wide that the board's confidence level is low that these are the best available comparable sales and that the adjustments made were representative of the market.

Income Approach

The Taxpayer's appraiser used the income approach to estimate the value of the improved property at 550 Daniel Webster Highway. The appraiser used the direct capitalization method, which is an acceptable methodology for valuing income-producing properties. Using this method, the appraiser has estimated the value of 550 Daniel Webster Highway at \$125,000. If the board were to accept this estimated value for the property and then use the

appraiser's technique employed in the sales comparison approach of deducting the assessor's value for the buildings in order to determine a residual land

value, the land value indicated for 550 Daniel Webster Highway would be \$37,000 (\$125,000 - \$88,000). This value does not come close to approximating the land value for this property as determined in the sales comparison approach section of the appraiser's report (\$75,000).

For the reasons stated, the board finds the Taxpayer's appraisal is not persuasive evidence that the Properties were disproportionately assessed.

Similarly, the Town submitted an appraisal that relied on sales outside the Town of Merrimack or sales within the Town that were improved. Notwithstanding this fact, the Town's appraiser used a more appropriate methodology in calculating the residual land value of the improved sales by calculating the value of the improvements using an acceptable cost estimating service rather than relying on the assessor's land-to-building ratios on the assessment-record cards. However, the board notes that it was necessary for the Town to use sales that either required significant adjustments, were slightly older than the Taxpayer's comparable sales or had some improvements on them. It was obvious from the testimony of both the Taxpayer and the Town that there was a paucity of comparable vacant land sales within the Town of Merrimack.

An additional concern of the board was that neither the Town nor the Taxpayer addressed the influence of the lot at 550 Daniel Webster Highway on the adjacent lumber yard part of which is located on 550 Daniel Webster Highway. The Properties may have a value to the lumberyard, and because 550 Daniel Webster Highway is already improved, it would not be inappropriate to consider the abutter value.

As mentioned previously, the burden of proof is on the Taxpayer, and the board finds the evidence submitted by the Taxpayer was insufficient to carry that burden.

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

Ignatius MacLellan, Esq., Member

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; Jay L. Hodes, Esq., counsel for the Town; and Chairman, Selectmen of Merrimack.

Date: July 11, 1997

Valerie B. Lanigan, Clerk

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