

Thomas Forbes and Jerome Palladino

v.

Town of Exeter

Docket No.: 16242-95PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$239,000 (land \$73,400; buildings \$165,600) on a .78-acre lot with a building containing office space and a residence (the Property). 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) the Property was purchased at auction in January 1992 for \$135,000;
- (2) the Property's location on Epping Road is a secondary commercial location

in town; and

(3) an analysis, considering comparable sales and leases and the income approach, supports a value of \$131,100 as of April 1995;

Page 2

Forbes/Palladino v. Town of Exeter

Docket No.: 16242-95PT

The Town argued the assessment was proper because:

- (1) the Property is a commercial entity in a C-2 zone with multiple permissible uses and is not being utilized at its highest and best use;
- (2) a stratification of C-2 sales supports the assessment;
- (3) an analysis of neighboring land assessments supports the land value; and
- (4) the purchase of the Property was not arm's-length and therefore is not a legitimate indicator of value.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$162,500. This assessment is based on a market value finding of \$164,100 and the Town's 1995 equalization ratio of 99%.

The board finds the best evidence of the Property's market value to be the sales submitted by the Taxpayer. However, after reviewing the assessment-record cards, photographs and multiple listing sheets, the board made additional adjustments to some of the sales for the grantor being FDIC or a lending institution and for the relative quality of the improvements. These revisions results in a correlated price for both the office and residential space of approximately \$55.00 per square foot. Applying the \$55.00 indicated value to the Property's 2,984 square feet results in an indicated market value

of \$164,100.

The board gives little weight to the income approach for this Property because the Property is more apt to be an owner-occupied/rental property than strictly a property purchased and managed for investment purposes. The board's experience has been that properties that are owner-occupied generally sell for more than the value indicated by the income approach.

The board considered but gave little weight to the purchase of the Property for \$135,000 in 1992 at auction from Hilco, Inc.. While the Taxpayer testified that the auction was well attended and quite competitive, the board has consistently held that auction sales are not necessarily arm's-length sales and reflective of market value. "An arm's-length transaction is \_[a]

Page 3  
Forbes/Palladino v. Town of Exeter  
Docket No.: 16242-95PT

transaction freely arrived at in the open market, unaffected by abnormal pressure or by the absence of normal competitive negotiation as might be true in the case of a transaction between related parties.\_ B. BOYCE, REAL ESTATE APPRAISAL TERMINOLOGY 18 (REV. ED. 1984)." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). Lending institutions are generally more motivated to liquidate their foreclosure portfolio than to hold and manage property for its maximum return. Such actions are not normal market motivations and generally disqualify those transactions as arm's-length. See also Society Hill Merrimack Condominium Association & a. v. Town of Merrimack, 139 N.H. 2534, 3255 (1994).

The board finds the Town's analysis of 6 commercial properties that have sold in the similar C-2 zone for generally more than they are assessed is not conclusive evidence that the Property is likewise under or properly assessed.

The relative assessment level of a strata to the Town's general level of assessment is evidence to be considered in a macro assessment analysis but it is not determinative of an individual property's proper assessment. Further, the board reviewed the Town's proportionality analysis of land assessments and again finds it too general in nature to show that the assessments were indeed relative to market value.

If the taxes have been paid, the amount paid on the value in excess of \$162,500 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  
Page 4  
Forbes/Palladino v. Town of Exeter  
Docket No.: 16242-95PT

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Chris Snow, Agent for Thomas Forbes and Jerome Palladino, Taxpayers; and Chairman, Selectmen of Exeter.

Date: April 29, 1997

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Valerie B. Lanigan, Clerk

0006