

Frank McNamara

v.

Town of Campton

Docket No.: 16753-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$98,000 (land \$19,500; buildings \$78,500) on .145-acre lot with an office building (the Property). The Taxpayer is also part owner of another vacant lot in the Town with a \$65,700 assessment under appeal in BTLA Docket No. 16754-96PT. 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 building is built against a ledgy bank which causes drainage problems and flooding at times; this type of damage cannot be insured against and causes damage to the carpet and furnishings; it is not possible to get any equipment behind the building to try to divert the water due to the steep terrain;

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(2) an appraisal performed by John Kelly estimated a market value of \$55,000 to \$65,000; and

(3) four commercial properties that have either been sold or listed in Campton indicate a generally lower value.

The Town argued the assessment was proper because:

(1) the Kelley appraisal is based on properties that are not very comparable;
(2) the former post office was not purchased by the Town for \$65,000 not so much due to price but due to other factors at town meeting including personalities;

(3) the 1994 estimate of value by William DeLashmit supports the present assessment by the Town; and

(4) the Century 21 sale for \$85,000 indicates the market for a property such as the Taxpayer's is better than projected by the Taxpayer.

The board's review appraiser inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. The report was provided to the parties with adequate time for them to comment. After receipt of the parties' comments, the board concluded its deliberations. The report concluded an assessment range of \$91,800 to \$93,200. The review appraiser noted the building size was 6.67% less than

that used by the Town and that the if Town's building assessment was reduced by that percentage, the building assessment would be \$73,300. Note: The review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$92,800 (land \$19,500; buildings \$73,300).

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The board finds the best evidence submitted in this case was the original report and supplemental report submitted by its review appraiser, Mr. Scott Bartlett. Mr. Bartlett's report analyzed the various sales and cost data submitted by the parties and arrived at an assessed value range of \$91,800 to \$93,200. As the Town noted in its follow-up comments to Mr. Bartlett's report, reducing the building assessment by the correct square footage on a percentage basis arrives at an assessed value within the range found by Mr. Bartlett. The board finds Mr. Bartlett's adjustments did recognize some of the unique functional aspects of the Property including the steep terrain at the rear of the building, the limitations of the septic system and the water damage associated with the drainage problem of the building being built into a bank.

The indicated market value of this revised assessment is approximately \$82,850 ($\$92,800 \div 1.12$). In reviewing all the sales evidence submitted by

the Taxpayer, the board finds this indication of market value is not unreasonable relative to other properties that have sold. Further, Mr. Bartlett's review and analysis of the sales and listings submitted all generally support the revised assessment.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$92,800 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 1998. 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

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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 Frank McNamara, Taxpayer; and Chairman, Selectmen of Campton.

Date: October 1, 1998

Valerie B. Lanigan, Clerk

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