

Patrick Roach

v.

Town of Plymouth

Docket No.: 16764-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$317,200 (land \$57,200; buildings \$260,000) on a 3.8-acre lot with a single-family home, a six-room motel, seven detached cottages, and a five-unit building (collectively known as the Knoll Motel) (the Property). 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 in 1992 for \$300,000 of which approximately

\$30,000 was for furniture, fixture and expenses (FFE);

(2) a February 1997 purchase and sales agreement had to be terminated because financing had been turned down due to the "low income producing ability" of the motel; the bank appraiser's estimate of value was \$286,000;

(3) the Property should be assessed similarly with the Pilgrim Motel located just off the interstate with better exposure;

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(4) a similar property (Gilchrest Motel) located just off the interstate in Thornton was recently reassessed at \$253,000;

(5) two of the Town's sales are not comparable as they are in a better location (1 hour from subject) right on Rte. 3, are fully insulated and one has a restaurant; and

(6) the proper assessment should be \$285,300.

The Town argued the assessment was proper because:

(1) an April 1996 appraisal giving the income approach the most weight estimated the value to be \$320,000;

(2) comparable sales support an estimate of value of \$35.00 per square foot; and

(3) the Pilgrim Motel sold for \$35.00 per square foot and the subject's location is comparable to Pilgrim.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$284,800. This revision is based on applying the 20% economic depreciation that was applied to the land and main building to the balance of the improvements.

The assessment-record card estimated the Property's value on a market

adjusted cost approach. Apparently at the time of the revaluation, the revaluation company determined that the Property required a 20% locational adjustment. There is no logic to have it applied to the land and one of the buildings and not the balance. This locational adjustment is also supported by the Taxpayer's testimony that the Property was located further from the interstate in an inferior location than one of its main competitors, the Pilgrim Motel.

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The board was unable to accept the Town's appraisal as a defense to the assessment for two reasons:

1) The sales comparison approach contained two sales that were from the Twin Mountain area, and the board was not convinced that adequate research had been done to justify the lack of a locational adjustment.

2) The income approach estimated an effective gross income (excluding the residence) approximately \$17,000 greater than the Taxpayer's actual income for 1996. The board did not find any evidence that the Property was not being prudently managed. However, even if one were to assume that a higher effective income could be obtained through a slightly more aggressive management and an increase in room rates, the resulting value estimate of an effective gross income of \$65,000 to \$70,000 (exclusive of the residence) still falls short of the Town's assessment. Consequently, the board finds the actual income history should be given significant weight. Further, the 1997

appraisal at \$286,000 done for financing a purchase and sales agreement of \$325,000 indicates that the actual income producing ability of the motel strongly influences any sales price.

In summary, the board finds its revised assessment creates an assessment more proportional to the collective evidence presented in this case including the following:

- 1) the Taxpayer's purchase of the Property in 1992 for \$300,000 including an estimate of FFE of \$30,000;
- 2) a reasonable estimate of the Property's income producing capability with significant weight given to historical income;
- 3) its locational disadvantage relative to Interstate 93 and its main competitor and very comparable property, the Pilgrim Motel;
- 4) the Pilgrim Motel's two recent sales in 1995 and 1997 for \$295,000 and \$248,000 respectively; and
- 5) the 1997 unconsummated purchase and sales agreement.

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If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$284,800 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 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.

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

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Patrick Roach, Taxpayer; and Chairman, Selectmen of Plymouth.

Date: November 4, 1998

Valerie B. Lanigan, Clerk

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