

Nickerson Business Park LLC

v.

Town of Tilton

Docket No.: 17096-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$1,459,600 (land \$272,900; buildings \$1,186,700) on a 12.04-acre lot with a 35,950 square-foot industrial building (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 assessment should be \$944,045; based on an assessment analysis of four manufacturing/industrial buildings and one retail building;

(2) the land assessment was based on the Property having three building lots when it has only one lot, and there should have been an adjustment due to the utility easement on the Property;

(3) the lack of water from a water company adversely affects the Property's marketability and value (The Property is presently served by well water.

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A prospective purchaser would not buy the Property, however, without water from the water company. The Taxpayer submitted an estimate of the cost to extend water to the Property and the rest of the subdivision.); and

(5) the subdivision road has not received the final paving coat, thus, the road has not yet been accepted by the Town, requiring the Taxpayer to maintain and plow the road.

The Town argued the assessment was proper because:

(1) it was consistent with the information available, including two appraisals obtained from the Taxpayer (1995 for \$1.5 million; 1996 update for \$1.3 million) (The Taxpayer stated the value decrease shows that the water issue erodes value.);

(2) the assessment was calculated by the standard assessment techniques used by the Town (The Town explained the building assessment calculation.);

(3) the assessment included 20% depreciation for incompleteness even though the building was finished on April 1, 1996 (The Town stated the depreciation was given on the assumption that all the site work was not completed.);

(4) the land assessment was based on the land area dedicated to the actual building site, parking lot and other supporting uses; and

(5) the land assessment appeared consistent with the asking prices on the

other lots in the subdivision.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$1,352,000 based on a market value finding of \$1,300,000 and the Town's 1996 equalization ratio of 1.04 ($\$1,300,000 \times 1.04$).

In reviewing the evidence and the reasonableness of the Town's assessment, the board considered what the Town's assessment would be with the 20% unfinished adjustment to the building removed. The Town had considered the building unfinished as of April 1, 1996, and thus, had applied the 20% unfinished factor. However, testimony was clear that the building was constructed between August of 1995 and February of 1996 with occupancy
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beginning in February 1996. The Taxpayer stated the only remaining work to complete in the spring was some minimal site work. Consequently, to determine the reasonableness of the assessment and the affect of the board's ruling on subsequent years (RSA 76:17-c), the board reviewed whether the final assessment of \$1,750,300 was proportional.

In arriving at its finding of \$1,300,000, the board reviewed and gave weight to the following evidence: 1) the Town's assessment-record card; 2) the actual building and site construction costs; 3) the July 1995 Fremeau appraisal; 4) the October 1996 Daniels update of the Fremeau appraisal; 5) the Taxpayer's marketing efforts of the Property; and 6) the existence of only on-site water supply for the Property.

This case raises the classic question of does the replacement cost of a recently constructed building represent the Property's value? In this case, the board finds it does not.

The evidence contained various estimates of the building's replacement cost new including:

- 1) the Town's estimate of building, site and paving at \$1,477,399 (source assessment-record card);
- 2) the Fremeau appraisal estimate for site and buildings at \$1,496,044 (source - Fremeau appraisal, page 56);
- 3) construction bids ranging from \$1,468,800 to \$1,580,000 (source - Fremeau appraisal, page 58);
- 4) actual construction cost of the building and immediate site work of \$1,352,241 (source - Daniels October 1996 update, page 2); and
- 5) \$1,350,000 actual construction cost of building and site work (source - Taxpayer's prehearing statement and testimony).

While the actuals and estimates vary to some extent, they are all of similar magnitude and indicate a replacement cost for the building and site work of approximately \$1,350,000. Clearly, this does not include any value for the 12.048-acre lot. Its value estimates range from \$272,900 (assessment-

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record card) to \$360,000 (Fremeau appraisal and the Daniels update). The addition of the land and building value indicate a total value by the cost approach of approximately \$1,750,000 to \$1,860,000.

Other evidence, however, strongly indicates that the value as arrived at by the cost approach was not achievable in the market in 1996. First, the Fremeau appraisal estimated the Property's value also by the income approach at \$1,375,000. While there was no direct testimony on Mr. Fremeau's income approach, the board finds, in reviewing his analysis, that the basic

assumptions in the income approach are reasonable. For example, Mr. Fremeau's assumption of a \$4.25 per square foot rent was derived from comparable rents in the Lakes Region of New Hampshire correlated with the recognition of the Property's superior location and office fit up. The Taxpayer indicated the company that is currently occupying the building, of which he is a principle, pays just in excess of \$5.00 per square foot. Mr. Fremeau's rent appears to be more reflective of the market as indicated by: 1) the Lakes Region comparable rents; and 2) the fact that one of the offers to purchase the Property was contingent upon a \$5.00 per square foot rent which he was unwilling to commit to. In short, Mr. Fremeau's income analysis provides some indication as to how far the market falls short of the value indicated by the cost approach.

Mr. Daniels' update recognizes in both his cost and income approaches that the Property's location is inferior to many of the land sale and lease comparables which are generally located in the southern third of New Hampshire and arrives at value estimates of \$1,370,000 and \$1,242,000 by the cost and income approaches respectively. Mr. Daniels applies an economic depreciation in the cost approach and increases the vacancy and capitalization rate in the income approach to recognize the inferior location. Mr. Daniels also performed a very cursory sales approach. While the board places little weight on his sales approach alone because of the lack of any supporting

documentation of the sales, its value conclusion of \$1,300,000 does generally

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support the conclusions of both his cost and income approaches and Mr. Fremeau's conclusion by the income approach.

Lastly, the Taxpayer's marketing efforts also indicate a value of less

than that by the cost approach. The Property was listed for sale from November of 1996 to November of 1997 for \$1,390,000. One offer was received for \$1,200,000 contingent upon the Taxpayer bringing off-site water to the Property. The Taxpayer determined that the cost of adding off-site water was prohibitive (see Taxpayer's Exhibit 1 - the Tilton and Northfield Aqueduct Company Inc. estimate of \$1,164,117) and, thus, did not proceed with the offer. This offer also indicates that while on-site water may be adequate for some uses (e.g., current tenant) the lack of water for both more water-intensive uses and fire protection may limit the market for the Property.

Response to Taxpayer's Arguments

The board does not find Mr. Clarke Nickerson's, owner, arguments relative to his assessment comparisons (averaging of adjusted base rates and adjustments of land assessments) to be convincing. First, for all assessments to be proportional they must be based on market value and the town's general level of assessment. RSA 75:1; See Appeal of Andrews, 136 N.H. 61 (1992). The exercise that Mr. Nickerson presented of averaging the adjusted base rates of the buildings of five industrial properties in Tilton does not establish a proportional assessment. Just as a meaningful estimate of market value is not obtained by averaging the sales prices of five different industrial properties varying in size, age, quality and condition, likewise such an assessment comparison is not meaningful unless adjustments for differences are recognized. Appraisals are not averages; rather, they are the correlation of general sales data to the unique characteristics of a specific property.

The board also finds Mr. Nickerson's recommended adjustment to the land to be without any merit. First, the assessed value of the land component is less than the estimate of the lot's market value by both Fremeau and Daniels. Further, Mr. Nickerson's adjustment for the powerline right of way through

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northern portion of the lot is subjective and, based on the map submitted, appears not to be warranted. That portion of the lot is the area that was not developed and would likely not have been developed due to steeper topography.

Lastly, Mr. Nickerson stated he would not have sold the Property for his argued assessment of \$944,045 because it would be a bad investment decision given the potential the Property had if the water situation could be resolved.

In summary, for all the reasons stated, the board finds the market value of the Property to be \$1,300,000 and the assessed value to be \$1,352,000. This assessment reflects the evidence that, for all practical purposes, the building was complete on April 1, 1996.

Refund

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$1,352,000 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.

Rehearing and Appeal

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

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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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Casey Nickerson of Nickerson Business Park LLC, Taxpayer; and Chairman, Selectmen of Tilton.

Date: September 4, 1998

Valerie B. Lanigan, Clerk