

Dan Dillon

v.

Town of Plymouth

Docket No.: 17117-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$128,300 (land \$24,700; buildings \$103,600) on a 6.0-acre lot with a 6-unit apartment 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 lot is 66 feet wide by 3,900 feet long and only 2% of the land area is usable because Tenney Mountain Ski area has an easement to operate its

lifts and trails on the remaining land;

(2) the land is in a private subdivision on a private road which does not receive any Town services;

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(3) the septic tank is one-half on the subject and one-half on Tenney Brook One Condominium Association (Tenney 1) property and septic water effluent is disposed by an off-property connection through a temporary agreement for \$40 per month;

(4) to construct a garage and driveway, the Taxpayer had to acquire an 8 foot by 30 foot easement from a neighbor;

(5) condominium unit C was purchased in April 1995 for \$20,000; all other units were purchased at foreclosure;

(6) the Property was changed from condominium ownership to apartments in 1996; therefore, the assessment should be reduced because apartments are valued between 15 and 30 percent of condominium values; and

(7) the proper assessment should be \$95,489.

The Town recommended revising the assessment to the April 1996 Patriot appraised value of \$120,000 and argued the revised assessment was proper because:

(1) the Property is located next to a ski area on a hill with views of surrounding areas;

(2) at the time of purchase, the Property was in poor condition with no parking; since the purchase, decks have been added and improvements have been made to the building;

- (3) the income approach to value, using actual income, supports a value of \$120,000;
- (4) the garage easement benefits the Taxpayer and does not detract from the Property's value; and
- (5) the septic problems are a detraction to the Property but have been addressed in the income approach as an additional expense.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$100,600 based on a market value finding of \$101,600 and the Town's equalization ratio of 99% ($\$101,600 \times .99$). In making a decision on value,

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the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

This is a difficult property to value with any certainty given many of its unique factors. First, the land configuration (66 feet wide by approximately 3900 feet deep) limits the Property's utility. As testified to, the septic tank is half on an adjoining property and the effluent from the septic tank goes to a leach field owned by Tenney 1 by a temporary arrangement between the two property owners. The narrow configuration of the lot and the

ski area slope and lift easements behind the lot along with the topography limit the ability for the Property to be further utilized for septic and/or expansion. The garage that the Taxpayer added subsequent to his purchase necessitated him acquiring an easement from another adjoining property to allow it to be built. This easement, while it certainly does benefit the Taxpayer, does place on it certain restrictions and requirements that any other owner with a similar improvement does not have. Therefore, it also is a factor affecting the Property's value.

There are three approaches to value: 1) the cost approach; 2) the comparable-sales approach; and 3) the income approach. The Appraisal of Real Estate at 71 (10th Ed. 1991).

While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Appraisal and Assessment Administration at 108. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal

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that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

In this case, the board finds the income approach to value most accurately estimates the Property's market value. Given the very unique configuration of the lot and the septic problems, it is difficult with any certainty to draw upon comparable sales for an indication of value. Further, while the cost approach could potentially have some merit in indicating the

Property's value, estimating the lot's contributory value would be difficult, again given its unique configuration and problems. The Property consists of six apartments which generate an income stream. Consequently, the board has concluded the income approach provides the most reliable approach to estimating the market value.

The board agrees with the Town that because of the Property's uniqueness, it is difficult to find any comparable rentals in the Plymouth area. However, the Town's general review of the rental market supports the use of the Property's actual rents to estimate gross income. Further, the Town's vacancy and expense estimates are based on recent actuals and are also deemed reasonable.

The Town was correct in including the annual \$480 fee to Tenney 1 for accessing their leach field as an expense in estimating the Property's net operating income. However, the board concludes that the Town's capitalization rate does not reflect the risk that any prospective purchaser would assume in being able to continue to access the Tenney 1 leach field. The agreement between the Taxpayer and Tenney 1 (Exhibit #1) specifically indicates it is not a perpetual easement or encumbrance and can be terminated by either party.

Further, the testimony of the parties indicated it is questionable whether there is any feasible alternative on the Tenney 1 property for another leach field site. Consequently, this lack of assurance of septic disposal

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would be a factor in being able to obtain conventional financing. (The Taxpayer testified that his acquisition of the Property was financed through private means). Consequently, the board has revised the Town's capitalization

rate based on an assumption of private financing at an interest rate of 13% adjusted by the sinking fund factor for changing value of .0543. This (including the effective tax rate) produces an overall capitalization rate of 16.56%. Dividing the Town's net operating income of \$16,832 by .1656 provides an indicated value of \$101,600 (rounded).

The board finds no further abatement is warranted because many of the Taxpayer's mathematical calculations were either averages or did not account for various market principles such as economies of scale, etc. Further, the Taxpayer's argument of the lack of municipal services is not necessarily evidence of disproportionality. The basis of assessing property is market value. See RSA 75:1. Any effect on value due to lack of municipal services are reflected in the actual rents, and consequently, the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$100,600 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

Certification

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

Date: November 4, 1998

Valerie B. Lanigan, Clerk