

Bank of New Hampshire

v.

Town of Bedford

Docket No.: 17123-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$605,200 (land \$180,500; buildings \$424,700) on an office condominium containing a branch bank (the Property). The Taxpayer also owns, but did not appeal, another property in the Town with a \$637,900 assessment. For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property's value was \$340,000 based on comparable sales and leases and

actual rents;

(2) the Property is contained in the oldest unit in the development, and there is no anchor to the center;

(3) oversupply of bank buildings decreased the market values of bank properties; and

(4) other units in the development were given economic depreciation.

Page 2

Bank of New Hampshire v. Town of Bedford

Docket No.: 17123-96PT

The Town argued the assessment was proper because:

(1) a property inspection reduced the assessment to correct errors in physical data;

(2) comparable sales and lease information supported the assessment;

(3) the Taxpayer signed a 1996 lease, which supports a higher assessment;

(4) the Taxpayer used contract rents and not market rents in his analysis; and

(5) the Taxpayer's sales and leases were outdated and distressed and were not in Bedford.

The board's review appraiser inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. Based on Mr. Bartlett's review of the parties' evidence, Mr. Bartlett concluded that the Property was fairly assessed and that the appeal should be denied.

After the board received Mr. Bartlett's report, the board viewed the Property with the parties.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry its burden of proof, and therefore, the appeal must be denied.

The board's decision is based on the following.

1) Assessments must be tethered to market value or a percentage of market value. See RSA 75:1. In this case, the Property's equalized assessment, which should roughly correspond to market value, was \$530,900 (\$605,200 assessment ÷ 1.14 equalization ratio). The Taxpayer concluded the Property's market value was \$340,000.

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use
Page 3
Bank of New Hampshire v. Town of Bedford
Docket No.: 17123-96PT

expertise and experience to evaluate evidence). Additionally, the agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Based on the evidence, Mr. Bartlett's report, the board's view of the Property and the board's expertise and judgment, the board finds that the Taxpayer's asserted \$340,000 market value is clearly too low, and the Town's \$530,900 equalized value appears more appropriate.

2) While the board is not bound by Mr. Bartlett's report, we do find that Mr. Bartlett's review of the Property and the parties' evidence provided the board with an objective review of the evidence that was submitted. In this case, we give Mr. Bartlett's report cumulative weight, backing up the board's independent conclusion that the appeal must be denied.

3) In calculating a property's market value, the board must assume the property is being valued consistent with the property's highest and best use. Assessments, therefore, must be based on market information to determine the value that would produce the highest return for the seller that would be paid by a buyer. Given this standard and the Taxpayer's burden, the board finds the Taxpayer's comparables only represented the low-end of the market and do not represent the maximum return that could be realized on the Property. Further, the Town obtained other comparable lease information that demonstrated significantly higher rental figures. The board concludes the Taxpayer did not perform adequate research to determine the true market rent that should be applied to this Property.

4) In addition to the board's specific concern about whether the Taxpayer only performed limited market research and only provided rents in the lower range, the board finds the Taxpayer's lease and sale comparables do not reflect the Property's value. Specifically, the leases were for properties in either inferior locations or with inferior buildings such as branches located

Page 4
Bank of New Hampshire v. Town of Bedford
Docket No.: 17123-96PT

as a unit within a larger building. While the Taxpayer's lease comparables #3 and #5 may be market indicators, the Town's lease information clearly showed that the Taxpayer chose or submitted only leases at the very low-end of the rental scale that may not be representative of market value.

Concerning the Taxpayer's sales, again the Taxpayer presented sales of units within a building. The Property is a free-standing bank with bank amenities. Therefore, it is not reasonable to compare this bank facility to a unit within a condominium building.

5) The other issue that the Taxpayer raised was that the Property was overbuilt given the asserted 2,000 square foot size for a standard branch bank. Additionally, the Taxpayer valued the space at the back of the building as simply storage space.

Concerning the asserted 2,000 square-foot size for a branch bank, the board does not find this argument to be convincing here. It is simply not enough for any party to make an unsupported assertion.

Treating the back part of the building as storage space is erroneous given the space's ability to be adapted to expansion or other office use. Specifically, the board discovered on the view that the storage space had windows and a separate access (on the right side of the building). These attributes make the back area easily convertible to office space. Any prospective seller or any prospective purchaser who was valuing the building at its highest and best use would recognize that expansion potential (either as part of the bank or for a separate office unit). The Taxpayer did not even consider this.

We do note that such a conversion has actually already taken place on the Property. The bank has created office space in the back right of the building. The board has not considered the improved space in its analysis for this tax year because the improved space had not yet been constructed. However, the fact that the improved space has been added supports the board's

Page 5
Bank of New Hampshire v. Town of Bedford
Docket No.: 17123-96PT

opinion that the back of the building, with its window and separate access, had the potential for expansion as of April 1, 1996.

Based on the above reasons, the appeal must be denied.

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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Bank of New Hampshire, Taxpayer; and Chairman, Selectmen of Bedford.

Date: September 11, 1998

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Valerie B. Lanigan, Clerk

Bank of New Hampshire

v.

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Docket No. 17123-96PT

ORDER

This order responds to the "Taxpayer's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

The board reviewed its decision and finds the decision adequately explained the bases for the board's denial. As the decision made clear, the Taxpayer did not show the property was worth \$340,000, as asserted by the Taxpayer.

The Taxpayer also argued in the rehearing motion that the original assessment card included errors, and thus, an abatement should have been ordered and the filing fee reimbursed. See RSA 76:17-b. The Town informed the board at the hearing that the card had been corrected. Moreover, on August 18, 1998, the Town sent the Taxpayer the abatement check for the errors. Because no abatement was ordered by the board, the Taxpayer is not entitled to reimbursement of the filing fee.

The Taxpayer also critiqued the Town's evidence and the board's review of that evidence. We remind the Taxpayer that it has the burden. Having not carried its burden and the board having concluded the Taxpayer's asserted value was low, the

board is not obligated to scrutinize the Town's evidence. Further, the board viewed the property, and the board's review appraiser viewed the

Page 2
Bank of New Hampshire v. Town of Bedford
Docket No.: 17123-96PT

property and filed a report that concluded the assessment was fair. All of this convinced the board that, looking at the property as a whole, the assessment was reasonable.

Concerning the expansion space in the rear of the property, the board did not restrict its view of the use of that space as bank space. The board saw that space as potential office or other commercial space for a use related or unrelated to the bank's use of the front of the building.

In conclusion, we again restate that determining value comes down to informed judgment. The board, and its review appraiser, extensively reviewed this matter and concluded the Taxpayer's \$340,000 value was not reflective of the property's true value.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Mark Lutter, agent for the Taxpayer; and Chairman, Selectmen of Bedford.

Date: October 23, 1998

Valerie B. Lanigan, Clerk

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