

Bank of New Hampshire

v.

Town of Barrington

Docket No.: 17126-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 adjusted assessment of \$349,800 (land \$123,700; buildings \$226,100) on a 4.27-acre lot with a bank 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 land was assessed as if the whole parcel was buildable although wet and steep areas exist;

- (2) the basement has substantial water damage that has ruined the carpeting;
- (3) the building does not have an elevator and does not meet ADA requirements;
- (4) the building has functional obsolescence and is over-built for the neighborhood;
- (5) the assessment was determined using a replacement cost method; and

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(6) the market value for the Property was estimated to be \$220,000 on April 1, 1996.

The Town argued the assessment was for the most part correct because:

- (1) the Taxpayer's initial abatement request prompted a review and subsequent reduction of the assessment to the current level;
- (2) the replacement cost method is applicable to newer construction, and the Property was built in 1986, just 6 years before the 1992 revaluation; and
- (3) an additional adjustment to the land portion of the assessment may be appropriate to reflect the excess or rear acreage.

Subsequent to the hearing, the board directed its review appraiser to review the file, inspect the Property and submit a report. Both parties were then given an opportunity to review the report and submit comments to the board. 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.

Additionally, the board on its own viewed the Property, both interior and exterior, and viewed the exteriors of some of the comparable sales.

Board's Rulings

Based on the evidence submitted, the board finds the correct assessment should be \$307,600. This is based on a building assessment of \$205,100 and a land assessment of \$102,500.

After receiving the review appraiser's report, the board took a view of the interior and exterior of the Property as well as the exterior of some of the comparable sales. As stated by the review appraiser, this was a difficult property to review given the data presented by both parties, and the review appraiser was unable to determine a reliable estimate of market value for the Property.

The board concurs with the review appraiser's opinion that the data submitted by both parties was insufficient to estimate a reliable opinion of

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value for the Property. The Town did not supply, nor did the Taxpayer, an adequate amount of market data to enable the board to form an opinion. Therefore, the board scrutinized the assessment as presented and reviewed the land and building components. Each of these will be discussed independently.

Land

The board disagrees with the Taxpayer's representative that a substantial portion of the lot is unusable. The board noted on its view of the Property that a portion of the area of the southwest section of the lot does have some sloping terrain and some wetness. However, there is sufficient usable area on the site to adequately supply the building with parking and pedestrian areas.

The board, however, also finds the location of the Property to be inferior to that of the Citizen's Bank. The Property is located away from the

main business area while Citizen's Bank is located at a signalized intersection in a more prominent part of the business district in the Town. The Property's land only assessment was \$106,200 while the Citizen's land only assessment was \$78,200. Even though the Property has a larger lot, the Citizen's lot is superior due to its key location. Therefore, it was appropriate to make an adjustment to the Property's assessment based on its location. Accordingly, the board has made a negative 20% adjustment, which should be placed under the heading "market adjustment" on the Property's assessment-record card. The revised land value would be calculated as follows:

Basic Value		Topo. Adj.		Excess Adj.		Undev. Adj.		Market Adj.	
\$175,525	x	.85	x	.80	x	.89	x	.80	= \$ 85,000
									Paving + 17,500
									Total \$102,500

Building

The board reviewed the building portion of the overall assessment and divided the review into the three various components: the lump sums, the
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office portion and the basement portion. The board did not find sufficient evidence to alter the lump sum figure of \$41,500 or the amount of depreciation applied to it of .90. Therefore, the depreciated value of the lump sums portion of the building assessment remains at \$37,400.

Next, the board reviewed the office portion of the building assessment. During the board's view it was apparent that although the building is only 10 years old as of the date of the assessment under appeal, the building had some

long-standing physical problems. A combination of average quality materials and below average workmanship appeared to be the cause of the deficiencies. The building itself is not of such an elaborate or unique design that standard, average quality workmanship would not have produced a building with fewer physical problems than the building under appeal. The water damage that was evident in many portions of the building from the top floor to the basement are typically not found in a regularly maintained building of this age. However, the Taxpayer's representative did not provide the board with any cost-to-cure figures that would allow the board to make a determination as to the degree of the problems that were evident. Therefore, the board made an additional, somewhat nominal, negative 10% adjustment for physical depreciation in addition to the 10% that was reflected on the assessment-record card. This 10% reflects the general condition and the water problem. Therefore, the office portion of the building would be assessed on the assessment-record card as follows:

$\$157,900$ replacement cost base $\times .80 = \$126,300$ for that portion of the building.

Similarly, the board viewed the assessment of the basement and found, for similar reasons, that although an additional adjustment was warranted, no information was given by the Taxpayer's representative to assist the board in making a more informed determination as to the size of the revision.

Therefore, the board similarly has adjusted the physical depreciation by an

additional negative 10%, and the basement assessment would read as follows:

$\$74,000 \text{ replacement cost base} \times .80 \text{ physical depreciation} \times .70$

functional depreciation = \$41,400.

Combining the assessments of the three components of the building; the lump sums, the office and the basement; yields a combined total of \$205,100. This is the total assessment for the building portion of the Property.

Combining the land assessment of \$102,500 with the building assessment of \$205,100 yields a revised assessment of \$307,600 for the Property.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$307,600 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 and 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 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

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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 the Bank of New Hampshire, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Date: November 17, 1998

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Town's" objection to the "Taxpayer's" response to the board appraiser's report. While the Taxpayer was a day late in filing the response, the board allows the response to be considered. The Town is not prejudiced by the one-day lateness, and the board wants to review and consider the Taxpayer's response.

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 order has this date been mailed, postage prepaid, to Mark Lutter, Agent for the Bank of New Hampshire; Mary Pinkham-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Dated: November 17, 1998

Valerie B. Lanigan, Clerk

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