

Knight Brothers

v.

Town of Hillsboro

Docket No.: 17136-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessments of:

\$260,500 (revised) on Lot 340, a 4.6-acre lot with a multi-use building containing a market, laundromat, video store and two apartments (the Store); and

\$1,363,900 on Lot 341, a 4.08-acre lot with a car dealership known as "Wyman's Chevrolet" (the Dealership).

At the hearing, the Town recommended a revised Dealership assessment of \$1,092,300.

The Taxpayer also owns, but did not appeal, eight other properties in the Town with a combined, \$477,600 assessment. For the reasons stated below, the board grants the Dealership appeal to the Town's revised \$1,092,300 assessment and grants the Store appeal to a \$183,600 assessment.

The Taxpayer has the burden of showing the assessments were 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 assessments were higher than the general level of assessment in the municipality. Id. The board finds the Taxpayer carried its burden concerning the Store but failed to carry its burden concerning the Dealership.

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The Taxpayer argued the assessment on the Dealership was excessive because a February 1997 appraisal estimated a value of \$875,000, and a September 1998 update of this appraisal revised this estimate to \$995,000. The Taxpayer also presented substantial testimony concerning the Property's expansion, present use and anticipated use given the current climate in the automobile industry.

The Taxpayer argued the assessment on the Store was excessive because:

- (1) a portion of the lot is unbuildable and is in a flood zone; when the building is replaced fill will have to be brought in to raise the rear portion of the building above the flood stage;
- (2) the main portion of the building is a converted barn built in the 1800's;
- (3) the apartments have electric heat, and one is rented at a below market rate;
- (4) the rent for the store area is higher than market, and the store area is in need of repair;
- (5) two new businesses (Dunkin' Donuts and Grumpy's Store) have recently opened nearby and have reduced the store's income;
- (6) a monthly income of \$5,000 would be required to support the current assessment;

(7) parking is limited due to the building's close proximity to the road; and
(8) the Store's value, based on an income approach, should be \$150,600 and, based on a comparable sales approach, should be \$150,100 to \$189,300.

After the Taxpayer filed this appeal, the Town revised the Store's assessment to \$260,500. At the hearing the Town recommended adjusting the Dealership's assessment to \$1,092,300.

The Town argued the revised assessment on the Dealership was proper because:

(1) adjustments were made to reflect the area used for the service garage; and functional depreciation was given on the overbuilt areas and the areas that are underutilized;

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(2) depreciation has been applied to the garage area;

(3) the Taxpayer's appraisal was flawed because one of the comparables used was a foreclosure; and

(4) the Taxpayer's appraiser's value opinion was within a reasonable range of the revised assessment.

The Town argued the revised assessment on the Store was proper because:

(1) an adjustment was made to correct the building's square footage;

(2) an adjustment was made for depreciation; and

(3) the assessment was comparable to the sale price of a property located only 1,500 feet from the Store.

The board's review appraiser inspected the Property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board on the Store. This report concluded the proper market value range should be \$180,000 to \$195,000.

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.

Following the hearing, the board viewed the Store and Dealership with the Taxpayer.

Board's Rulings

Based on the evidence, the board orders the following assessments:

Store \$183,600; and

Dealership \$1,092,300.

Concerning the Dealership, the board finds the Taxpayer did not show that the Town's revised assessment was excessive. Clearly, this dealership is unique because of the expansion that created, in essence, a location for a second dealership that currently cannot be used as a dealership. Moreover, based on the Taxpayer's testimony it would be difficult to use the old

dealership space as a new dealership given the restrictions placed by the

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automobile companies concerning the location of dealerships. Nonetheless, the Town's revised assessment, fairly and reasonably considered this factor and made appropriate adjustments thereto. At the same time, the Taxpayer's appraisal estimated a market value of \$995,000. This means the Taxpayer's value estimate and the equalized assessment ($\$1,092,300 \div 1.02 = \$1,070,900$) vary by only 7%. Given the type of property involved and the unique value factors concerning the property, the Town's assessment reasonably reflects the Dealership's value. Further, the Taxpayer's appraisal did not convince the board that a further adjustment was warranted from the Town's revised

assessment. Finally, we note that the Town presented an alternative income approach for the Dealership that would have actually supported a higher assessment. Nonetheless, given the board's view of the Property, the testimony presented by Mr. Knight concerning the difficulties confronting dealerships, and the other presented evidence, the board finds the Town's revised assessment to be a reasonable reflection of the property's value.

Concerning the Store, the board concurs with the Town's frustration about the Taxpayer's changing value estimates. The Town stated that the Taxpayer presented a \$106,000 value initially to the Town, a \$103,200 value initially to the board and a \$156,600 value at the hearing. Certainly, a change in value of this magnitude raises a question about Mr. Lutter's credibility or ability to estimate value. There is a substantial difference between a \$100,000 property and a \$150,000 property, and if Mr. Lutter intends to make value conclusions, he should know the difference. One could easily conclude from the changing value estimates that Mr. Lutter was either sloppy in his initial estimates or was simply trying to lowball the value. Despite this, the board is required to review the assessment to ensure that it is based on market value. Therefore, the board accepts the low end of Mr. Bartlett's recommended value of \$180,000. This value was consistent with the board's initial value estimate after the hearing and before the view and before reviewing Mr. Bartlett's report. The board incorporates here the

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information in Mr. Bartlett's report, which accurately reflects how the board would value this property.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$183,600 for the Store and \$1,092,300 for the

Dealership 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 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

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Knight Brothers, Taxpayer; David C. Wiley of DRA, Agent for the Town of Hillsboro; and Chairman, Selectmen of Hillsboro.

Date: December 24, 1998

Valerie B. Lanigan, Clerk

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