

Bank of New Hampshire

v.

Town of Bristol

Docket No.: 17145-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessments of \$626,100 (land \$124,650; buildings \$501,450) on Lot 81, a .717-acre lot with a 3-story bank building and a 1-story office building; and \$45,000 on Lot 45, a vacant, .13-acre lot used for parking (the Properties). For the reasons stated below, the appeal for abatements is granted.

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 Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the Properties' assessments were excessive and reference should be made to Taxpayer Exhibit #3 for an itemization of the

Taxpayer's arguments.

The Town argued the assessment on Lot 81 was proper because:

- (1) a revaluation of the Town was done in 1988, with an update in 1993, and this correctly set the assessment using the cost approach;
- (2) the Property was worth \$750,000 based on discussions with realtors;

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- (3) the Taxpayer's appraisal failed to include the value of the two upper floors;
- (4) in 1996, the school district offered \$160,000 for the wood frame building and the parking lot across the street (Lot 45); and
- (5) the bank carried \$1,000,000 in fire insurance coverage on the Lot 81.

Board's Rulings

Based on the evidence, the board finds the assessment on Lot 81 (the Bank Property) should be \$384,500, and the assessment on Lot 45 (the Parking Lot) should be \$45,000. The board makes these findings based on the following.

1) Looking first at the Parking Lot, the board finds the Taxpayer did not adequately demonstrate that the Parking Lot was overassessed. While the Taxpayer made a legitimate argument that the Parking Lot should be assessed as part of the Bank Property, the board concludes the Taxpayer did not carry its burden of showing the Parking Lot was overassessed. Specifically, the board finds the Parking Lot certainly contributes value to the Bank Property, but the Parking Lot has an independent value that may exceed the contributory value to the Bank Property.

(The following paragraphs apply to the Bank Property.)

2) The Taxpayer presented a credible appraiser who provided a supportable opinion of value. The board scrutinized the appraiser's report during the hearing, and the appraiser was able to answer the board's questions. Additionally, the research and presentation made by the appraiser strongly indicated that the appraiser had considered all of the factors that should have been considered in valuing the Bank Property. Therefore, the board finds the appraiser's report to be the best submitted evidence of the Bank Property's market value.

3) 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

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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 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).

The board finds the comparative sales approach to be the best approach that was presented to the board. While the Town insisted that the cost approach should have been used, the board disagrees given the information presented to the board. First, the Town did not present any current information upon which the cost approach could be based. Specifically, the Town did not recalculate the Bank Property's value using a 1996 cost approach.

Rather, the Town simply presented the assessment-record card, which was based on a 1988 cost approach. Additionally, the Town did not present any vacant land sales, which is an essential part of the cost approach. Second, the Taxpayer's expert testified that the cost approach was not the best approach in this case because of the difficulty in calculating the depreciation due to external obsolescence, including economic factors, and the difficulty in estimating physical depreciation given the age of the building. The board agrees with the Taxpayer on this point.

4) The board ultimately chose the Taxpayer's sales approach because the board had concerns about whether Mr. Blumenthal's income approach was independent enough to be relied upon. Specifically, Mr. Blumenthal testified that his sales information was independently gathered by him, but he admitted, under board questioning, that he had received rental information from the Taxpayer's representative, which was used in the income approach. The board finds the provision of and use of rental information from the Taxpayer's representative contaminated the independence of the income approach. This

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does not mean that the board totally rejects the Taxpayer's income approach, but given the potential problem, the board decided to go with the sales approach, which was an independently arrived at value.

5) The board adjusted the Taxpayer's sales value to include the depreciated cost of the safety deposit boxes and the vault door, which the Taxpayer's appraiser stated he had not considered in his sales approach. The recalculated assessments are as follows.

Taxpayers' Sales Value	\$315,000
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Safety Deposit (depreciated 25%)	\$ 24,400
Vault Door (depreciated 25%)	<u>\$ 30,300</u>
Total	\$369,700
Equalization Ratio	<u>x 1.04</u>
Lot 81 Assessment	\$384,500
Lot 45 Assessment	<u>\$ 45,000</u>
Total Assessment	\$429,500

6) Having presented a credible opinion of value, the burden of persuasion shifted to the Town to support the assessment. The Town did not present any market evidence to support the assessment. Towns are obligated by RSA 75:1 and RSA 75:8 to ensure that assessments are tethered to market value on an annual basis. Therefore, towns should be able to support assessments based on market information. In this case, the Town did not present any information to either support the assessment or to refute the Taxpayer's presentation. Therefore, the Taxpayer is entitled to an abatement as discussed above. It is woefully insufficient for a town on a property of this size to simply rely upon an assessment-record card that was based on values established eight years previously.

Taxpayer's Request for Costs

The Taxpayer requested that the board order a refund of the filing fee and award \$400 in costs for Mr. Blumenthal's testimony before the board. The board denies the request for the filing fee, concluding that this case does not meet the requirements of RSA 76:17-b (filing fee reimbursed). While the assessment, based on the information presented to the board, was certainly not supported, the board could not conclude that the error was due to clerical

error or plain and clear error of fact as required by RSA 76:17-b. Thus, the

filing fee will not be reimbursed.

However, the board grants the Taxpayer's request for reimbursement of Mr. Blumenthal's appearance fee. RSA 71-B:9 states: "Costs may be taxed as in the superior court." One of those taxable costs is the attending fee for expert witnesses. See Superior Court Rule 87 (Taxation of Costs in Civil Proceedings). Mr. Blumenthal testified that he was charging \$100 per hour for four hours, which given the length of the hearing and the travel time to and from the board, seems reasonable. Therefore, the board orders the Town to pay \$400 for costs. The Town shall pay the \$400 in costs within 30 days of this decision unless a rehearing motion is filed. If a rehearing motion is filed and denied, the Town shall pay the costs within 30 days of the rehearing order.

Refund of Taxes

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$429,500 (lot 81 \$384,500; lot 45 \$45,000) 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 Procedure

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
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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 the Bank of New Hampshire, Taxpayer; and Chairman, Selectmen of Bristol.

Date: July 28, 1998

Valerie B. Lanigan, Clerk

Bank of New Hampshire

v.

Town of Bristol

Docket No.: 17145-96PT

ORDER

This order follows up the October 14, 1998 hearing. The board will have Scott Bartlett, the board's review appraiser, inspect the property, review the entire file, listen to the July 17, 1998 hearing tape and then file a report with the board, copying the parties with the report. Given Mr. Bartlett's schedule, the board hopes he can finish his report within two months. Upon filing of the report, the board will then issue an order of how the case will proceed. Therefore, the parties shall not file responses to Mr. Bartlett's report until ordered by the board.

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; and Chairman, Selectmen of Bristol.

Date: October 21, 1998

Valerie B. Lanigan, Clerk

0006

Bank of New Hampshire

v.

Town of Bristol

Docket No.: 17145-96PT

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.

After receiving the "Town's" rehearing motion, the board instructed Mr. Scott Bartlett, the board's review appraiser, to prepare a report. The report, which was supplied to both parties for comment, reached a value conclusion similar to the board. Therefore, the report supports the board's decision and the board's denial of the rehearing motion.

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

Concurred, unavailable for signature
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 the Bank of New Hampshire, Taxpayer; and Chairman, Selectmen of Bristol.

Date: February 19, 1999

Valerie B. Lanigan, Clerk

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Bank of New Hampshire

v.

Town of Bristol

Docket No.: 17145-96PT

ORDER

This order is being issued to correct the board's February 19, 1999 order in which the board stated the rehearing motion was submitted by the "Taxpayer." The rehearing motion was received from the "Town" and the board amends paragraph 1 of its order to read as follows.

"This order responds to the **"Town's"** rehearing motion, which is denied."

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 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; and Chairman, Selectmen of Bristol.

Date: February 25, 1999

Valerie B. Lanigan, Clerk

0006

Bank of New Hampshire

v.

Town of Bristol

Docket No.: 17145-96PT

Order and Hearing Notice

This order responds to the "Town's" rehearing motion and the "Taxpayer's" objection thereto. The arguments raised by the Taxpayer's objections are legitimate objections. The board does not usually allow parties to produce and then submit new evidence or arguments in a rehearing motion. TAX 201.37(e) provides:

Additional Facts or New Arguments. Parties shall submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available to the moving Party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing. Except by Leave of the Board, Parties shall not submit new evidence with rehearing motions. Leave shall only be granted when the offering Party has shown the evidence was newly discovered and could not have been discovered with due diligence in time for the hearing and when the new evidence will assist the Board or where justice otherwise requires.

Because of the issues raised in the rehearing motion, the board will hold a hearing on whether a rehearing should be held. This does not mean the

board is granting the Town's motion. It simply means the board wants the Town and the Taxpayer to have an opportunity to make their argument orally.

Further, this provides the board with an opportunity to question the parties.

After the hearing, the board will decide whether, and under what conditions, a rehearing would be held.

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The board concludes that it is essential that a town official, other than just the assessor, such as Mr. Shackett the chair of the board of selectmen, attend the hearing.

The hearing will be held on Wednesday, October 14, 1998 at 1:00 p.m. at the board offices in Concord.

The board also wants to view the property before the hearing. A view has been scheduled for Thursday, October 1, 1998 at 10:00 a.m.

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; and Chairman, Board of Selectmen of Bristol.

Date: February 25, 1999

Valerie B. Lanigan, Clerk

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