

CFX Bank

v.

Town of Milford

Docket No.: 17150-96PT

DECISION

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

\$1,422,900 (land \$309,600; buildings \$1,113,300) on Lot 40, a 2.10-acre lot with a bank building; and

\$140,700 (land \$124,500; buildings \$16,200) on Lot 30, a .84-acre parking lot (the Properties).

The Taxpayer also owns, but did not appeal, another property in the Town with a \$362,200 assessment. For the reasons stated below, the appeals for abatements are denied.

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 failed to carry this burden.

The Taxpayer argued the assessments were excessive because:

- 1) an appraisal estimated a \$725,000 value as of April 1, 1996;
- 2) the Properties are partially within the 100-year flood zone;
- 3) the branch bank building is over-improved for the area; has electric

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heat; and the second floor is under-utilized;

4) comparable sales supported a \$70.00 per-square-foot value for the Properties; and

5) an income analysis supported a \$730,000 market value for the Properties.

The Town argued the assessments were proper because:

1) the Properties' value on April 1, 1996, was \$1,300,000 based on comparable sales and \$1,500,000 based on the income approach; and

2) the building is superior in quality, has expansion potential, and would support a \$15.00 per-square-foot triple-net lease.

The board's review appraiser inspected the Properties, reviewed the property-assessment cards, reviewed the parties' exhibits and filed a report with the board (copy enclosed). This report recommended a market value of \$920,000 (\$1,232,800) assessment.

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.

After the hearing, the board viewed the Properties.

Board's Rulings

Based on the board's review of the evidence, the board finds the Taxpayer did not show overassessment.

As the photographs in the file demonstrate and the board's view of the Properties confirmed, this is a very good property in all respects. The lots are well-maintained and well-landscaped, and the separate parking-lot offers sufficient parking for the buildings present and future use. The building is in good shape and serves well as a bank headquarters and has the potential to be converted to other office use that would command a high rent (without substantial renovation costs). As a home office for a bank, the building and grounds serve their use very well.

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The board includes the above recitation to provide the reader with the board's sense of the high quality of the total package these Properties present.

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 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).

Given the evidence in this appeal, we find the comparable-sales approach to be the most appropriate approach to value because this approach most parallels the thinking of the potential purchaser who would purchase these Properties to use as a bank home office. The board finds the income approach inapplicable because these Properties would be most likely owner-occupied. The board finds the cost approach inapplicable because, even as pointed out by the Taxpayer, the economic conditions in 1996 would have to be considered if the cost approach were used. The market approach reflects economic conditions, and therefore, in this case, provides an adequate picture of the market.

The board reviewed the Taxpayer's appraisal, in its entirety, but after selecting the market approach, the board will focus on that part of the Taxpayer's appraisal. Specifically, the board finds the Taxpayer did not carry its burden of proof because the sales that were used were not good comparables for these Properties.

Comparable B-1 was a bank property that was converted to multi-tenant use. Given the highest-and-best-use restriction in this case (board bound to

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consider the highest-and-best-use as a home bank), the board could not rely on Comparable B-1. Additionally, the Properties are a superior package in terms of appearance and parking. Finally, even if we assume the Taxpayer's \$725,000 value is correct, Comparable B-1 was not within the Properties price range.

Comparable B-2 is a different type of building, especially with its upper floors being occupied by offices and apartments. Comparable B-2 also lacks the land-to-building ratio of the Properties. Finally, even if we assume the Taxpayer's \$725,000 value is correct, Comparable B-2 was not within the Properties price range.

Comparable B-3 was a FDIC sale that was purchased and then converted to non-bank use. Again, this use conflicts with the highest-and-best-use that the board is bound by in this case. Finally, even if we assume the Taxpayer's \$725,000 value is correct, Comparable B-3 was not within the Properties price range.

Comparable B-4 is a different type of building. The Properties are a very good bank home office while Comparable B-4 is a building within an office park that is not used for a bank. Additionally, Comparable B-4 has an inferior location from the Properties. Finally, the purchaser of Comparable B-4 was the tenant who also owned an adjoining building, and therefore, this sale is not a reliable arm's-length transaction. (The board never heard whether anybody reviewed the lease to determine if the lessee had an option in the lease.)

Comparable B-5 is also a FDIC sale, and the building included only 3,072 square-feet of banking space, which is substantially less than the Taxpayer's building.

Comparable B-6 was an offer, not a sale, and Comparable B-6 was not a bank but rather was a mortgage company. While a mortgage company and a bank share several attributes, there are several taxable bank amenities that a mortgage company would not have such as vaults, teller stations and drive-up windows.

Because the board finds the Taxpayer's market approach to be inadequate, the board finds the Taxpayer did not carry its burden of proof.

The board has decided not to adjust the assessments to Mr. Bartlett's figure because the \$1,100,000 equalized value for the Properties seems reasonable given the totality of the evidence before the board. Therefore, the board is reluctant to adopt Mr. Bartlett's figure when his figure supports the conclusion that the Taxpayer did not carry its burden of proof and supports the conclusion that the Town's assessments were reasonable. Additionally, we note that both parties had concerns with Mr. Bartlett's report.

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 CFX Bank, Taxpayer; and Chairman, Board of Selectmen, Town of Milford; and William R. Drescher, Esq., Counsel for the Town of Milford.

Date: March 12, 1999

Valerie B. Lanigan, Clerk

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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. Further, the Taxpayer did not submit any new evidence that existed but was unavailable at the time of the hearing but rather only further argued its case. That is not a basis for rehearing.

The board finds all of the issues raised in the Taxpayer's rehearing motion were adequately addressed in its March 12, 1999 decision. However, the board will address several points as clarification of its decision.

1) The Taxpayer stated the board ignored the review appraiser's (Mr. Bartlett) report and conclusions. As the board elucidated in its decision, the board gives Mr. Bartlett's report the weight it deserves. Mr. Bartlett was not a party to all of the evidence as he did not hear the testimony or listen to the tape of the hearing. The board considers all evidence submitted and

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Mr. Bartlett's report is one piece of evidence, but not conclusive. Further, Mr. Bartlett's report generally supported the conclusion that the Taxpayer failed to carry its burden of proof.

2) The board based its decision on a thorough review of all of the evidence submitted in this case and determined that the comparable sales approach was the most appropriate approach to value the Property. The board found the comparable sales submitted by the Taxpayer were not good comparisons (see pages 3 and 4 of decision) and found that the Taxpayer did not carry its burden to show the Property was disproportionately assessed.

3) To the extent the Taxpayer attempted to discuss previous cases heard by the board, the board will not rule on those as they were not part of the evidence in this case.

Due to Member MacLellan's resignation, board member LeBrun has listened to the hearing tape, reviewed the record, including all exhibits and Mr. Bartlett's report and then was the second member for deliberations.

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

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, 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 CFX Bank, Taxpayer; and Chairman, Board of Selectmen, Town of Milford; and William R. Drescher, Esq., Counsel for the Town of Milford.

Date: June 15, 1999 _____

Lynn M. Wheeler, Clerk

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