

Matthew S. and Wendy Fox

v.

Town of Canterbury

Docket No.: 17207-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$105,897 (land \$70,600; current-use credit \$43,403; buildings \$78,700) on a 69-acre lot with a commercial building (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the areas in the building that contain the coolers and the smoke rooms are double assessed due to a separate value being added in the extra features

portion of the assessment-record card for those items;

(2) several areas within the building are very low posted and are minimally insulated;

(3) the general overall condition of the building is poor including the insulation and wall covering in the coolers;

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(4) the value on the two connected sheds is excessive due to their very poor condition;

(5) the 1.5 condition factor on the .5-acre building site for commercial use is not justified because the site is very similar to adjoining properties that do not have that condition factor; and

(6) the Taxpayers' specific use of the Property as a smokehouse is enhanced by their grandfathered compliance with Food and Drug Administration (FDA) rules which is not transferrable with the Property.

The Town argued the assessment was proper because:

(1) the Property is a special-use property which might appropriately be valued by the income approach;

(2) while a 1.5 factor was applied to the commercial site, it still results in a value approximately 30% less than many other commercial sites; and

(3) the building received more than 5% additional depreciation for its physical condition.

Subsequent to the hearing, the board viewed the interior and the exterior of the buildings and the land around them.

Board's Rulings

Initially, the board would note two things about the Property that were

clear from the testimony and the view. First, the Property's very unique use as a smokehouse makes it difficult to value and to separate real estate value from business value. Second, the Property is located at a dead-end road in a relatively remote area of Canterbury. While the Property is in the general proximity of the Canterbury Shaker Village, it is still off any main highway.

For these reasons, it is a difficult property to value with any certainty.

However, the board finds that the overall condition of the Property and its unique singular use justify additional physical and functional depreciation on the buildings. Further, the land value should be reduced for its off-site water supply.

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Land

While the board understands the Taxpayers questioning an additional 50% factor on the site, the board finds the site value of \$22,500 would not be unreasonable if it contained its own water supply. As the Taxpayers testified, however, the water supply to the smokehouse comes from the adjoining property owned by a relative. While the Town applied a 3% functional depreciation to the buildings (which equates to an approximate \$2,000 reduction in assessment), the board finds that an additional reduction on the land is warranted to reflect the lack of on-site water. Reducing the condition factor to 1.25 further recognizes the cost to cure the lack of on-site water (total reduction for off-site water: land \$3,750; building 3% - \$2,100) and results in a site value on the land of \$18,750.

Buildings

On the view, the board found the building and business to be attractive and appealing. However, much of that attractiveness is not based on the structural integrity or functional utility of the building, but rather on the owners' eye for homespun decoration. The board did note on the view, that the building, while generally in usable condition, does have very noticeable physical deterioration. The interior covering of the coolers is warped in many places, some exterior roofing and siding is in need of repair and the general quality of the finish and workmanship is below average. Further, the layout of the facility and the lost-posted areas in several of the rooms diminish the maximum utility of all the square footage. These items warrant further physical and functional depreciation.

Furthermore, the Property has been continually used as a smokehouse since 1969 with several additions since that time. The board agrees with the Taxpayers that it would be very difficult, given the Property's long use as a smokehouse, for any subsequent owner to use the building for any other purpose. However, a new owner would likely have to do significant renovations to bring various parts of the building into compliance with current health

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regulations. The Taxpayers testified their use was grandfathered relative to current FDA regulations but any new owner would not be grandfathered.

Based on the above findings, the board concludes the building should have a total physical depreciation of 30% and total functional depreciation of 20% (an additional 17% above the 3% for the shared well).

The board finds the Town's methodology of adding for the two coolers and smoker is appropriate and that those improvements to the building are above and beyond the normal interior type finish anticipated in the building's

replacement cost schedule. However, the board finds the cooler and smoker values should receive the same physical and functional depreciation as the building of which they are part.

Lastly, the board viewed the two connected sheds and find they have minimal value due to their very poor condition and lack of foundation. The board has estimated the contributory value of the sheds to be approximately \$500.

In summary, the assessment is:

.5-Acre Site	\$18,750
Current-Use Land	4,697
Building	34,900
660 Square-Foot Cooler	6,600
560 Square-Foot Cooler	5,600
Smoker	1,800
Shed	<u>500</u>
Total	\$72,847

The board realizes this is a significant adjustment percent-wise from the Town's assessment of \$105,897. In reviewing the reasonableness of its final conclusion, the board tried to envision what this Property would sell for on a small lot in a remote location. Based on our view, we conclude that a market value of \$70,000 to \$75,000 is reasonable and anything in excess of that would be unlikely given the very unique nature of the improvements.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$72,847 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

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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.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Matthew S. and Wendy Fox, Taxpayers; and Chairman, Selectmen of Canterbury; and Alice MacKinnon, Agent for the Town of Canterbury.

Date: July 13, 1998

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Valerie B. Lanigan, Clerk