

Cynthia J. Rogers

v.

Town of Milford

Docket No.: 17242-96PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$278,600 (land \$224,500; buildings \$54,100) on a 2.0-acre lot developed as a used-car lot (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 argued the assessment was excessive because:

- (1) the Property was purchased in February 1997, for \$74,000 plus outstanding taxes (approximately \$76,000);
- (2) the land assessment was excessive because only 12,500 feet of the lot is

useable with the remainder severely sloped and, as of April 1, 1996, heavily wooded;

(3) the Town incorrectly described the building (The basement is only 218 square feet not 513 square feet.);

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(4) the Property was overassessed when compared to others in Town (Land condition factor and adjustments and building condition and adjustments have not been consistently employed.); and

(5) as of April 1996, the Property had a market value of \$75,000 to \$100,000.

The Town argued the assessment was proper because:

(1) the Property is located in the central business district with high density commercial use;

(2) the land values were based on a 1.0-acre site and adjusted up or down for size;

(3) the Town did not think an adjustment to the land condition was appropriate because of the density of use, the topography is not that severe and the rear land was assessed at a lower residential value; and

(4) land sales supported the assessed value.

After the hearing, one of the board members, Mr. MacLellan, was in Milford viewing another appealed property. He was able to also view the exterior of the Property and the lot.

#### **Board's Rulings**

The board finds the proper assessment to be \$256,700 (land \$202,600; building \$54,100), which equates to a \$191,600 equalized value (\$256,700

divided by the 1.34 assessment ratio).

As stated above, the Taxpayer has the burden of proof. To carry the burden of proof, the Taxpayer should have presented the board with market evidence of the Property's value. The evidence on value that the Taxpayer presented was not persuasive.

First, the Taxpayer's purchase for \$150,000 could not be relied upon because of the circumstances surrounding the sale, namely: (a) the \$150,000 purchase price was almost equally divided between payment to the owner and payment for back taxes; (b) the payment to the owner was completely owner financed with monthly payments of \$1,000 a month, which happened to be the Property's then monthly rent; and (c) the payment to the Town for back taxes

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was pursuant to a monthly payment agreement with the Town. While the history of the prior owner's attempts to sell the Property was some indication that the Property may have been overassessed, the sale itself was not reliable in establishing the Property's value.

Second, the Taxpayer introduced four comparables -- two sales and two assessment comparables. The board will not rely on the assessment comparables because market information is more reliable than assessment information, especially when dealing with unique and differing properties. It was clear from the photographs and the one board member's view that using assessment comparables for the Property's building would not be helpful given the type and condition of the building on the Property. Concerning the two sales, the board found Comparable A could not be relied upon because it was a sale shortly after a death to an employee who had been working on that property.

The board could not draw any conclusions from Comparable C, the Pizza Hut sale, that could be applied to calculating the Property's value.

Having failed to provide the board with any market information of the Property's value, the board could not make a market adjustment to this Property. Additionally, without market support, the board was not comfortable making any further depreciation deductions to the building assessment. Furthermore, we note that the Town reinspected the Property after the appeal was filed and adjusted the building assessment to the current \$54,100.

Despite the Taxpayer's failure to produce a definitive market value for the Property, but based on an overall view of the evidence, including the Town's methodology, the board concludes some adjustment is warranted for the shape and topography of the lot. As testified to by the Taxpayer and as viewed by one board member, the front of the lot (less than 13,000 feet) is flat, but then there is a drop off to the back of the lot. While the back of the lot certainly can be utilized, the Property does not have the same value as a one-acre lot that is flat from the road back. Nonetheless, the Town assessed the Property without any topographical adjustment for the prime site.

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On the other hand, it must be noted that the Town testified that the rear acre was not assessed at commercial/industrial rates but was assessed at excess residential rates. The board concludes a conservative -10% adjustment is warranted for topographical reasons. The board has been conservative in its adjustment because the burden of proof is on the Taxpayer. The 10% topographical adjustment results in a \$197,600 prime site, and when the \$5,000 rear-acre assessment is added, the total land assessment is \$202,600. To this

we add the \$54,100 building assessment for a total assessment of \$256,700.

After the hearing, the Taxpayer filed a motion for costs. The board denies that motion. The board does not find that the Town's conduct warrants the awarding of costs, see TAX 201.39, especially given the dearth of market information provided by the Taxpayer.

If the taxes have been paid, the amount paid on the value in excess of \$256,700 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.

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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank Coffey, Agent for Cynthia J. Rogers, Taxpayer; and Chairman, Selectmen of Milford.

Date: December 30, 1998

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Valerie B. Lanigan, Clerk

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ORDER

On October 7, 1998, the "Taxpayer" filed four motions with the board. The board denies three of these motions in this order, and the board will address the motion for costs in the decision.

"Motion for Consideration of Taxpayer's Exhibit C"

The board denies this motion and will not consider the motion in deciding this case. Parties are required to present all arguments at the hearing. TAX 201.37 (e). Furthermore, without board permission, parties are not entitled to file post-motion material to reargue a case. TAX 201.36 (a).

"Memorandum in Support of Taxpayer's Objection"

This motion is, in essence, a request for reconsideration of the board's ruling on the Taxpayer's objection. This motion is denied as premature. After the board issues its decision, the Taxpayer may refile this motion as a rehearing motion. The rehearing timelines will be stated in the board's decision.

"Motion Citing the Board's Show Cause Order"

The board denies this motion and will not consider the motion in deciding this case. Parties are required to present all arguments at the hearing. TAX 201.37 (e). Furthermore, without board permission, parties are not entitled to file post-motion material to reargue a case. TAX 201.36 (a).

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The board will use the town-wide 1.34 assessment ratio in deciding this appeal. The 1.17 ratio cited by the Taxpayer was from the board's January 7, 1998 order. The 1.17 ratio was part of the department of revenue administration's (DRA) ratio study. The DRA study stratified ratios by property type. The board, however, is required to look at the level of assessment generally in the municipality, which was 1.34.

"Motion for Costs, Attorney and Filing Fees"

The board will address this motion in the decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank Coffey, Agent for Cynthia J. Rogers, Taxpayer; and Chairman, Selectmen of Milford.

Date: December 24, 1998

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Valerie B. Lanigan, Clerk

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