

Dwight D. Barton

v.

Town of Tilton

Docket No.: 17421-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessments of the following "Properties":

Map U-5, Lot 23 - \$79,500 (land \$12,900; buildings \$66,600), an office/retail space; and

Map U-5, Lot 24 - \$105,400 (land \$15,200; buildings \$90,200), a retail store front.

For the reasons stated below, the appeal for abatement 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 assessments were excessive because:

- (1) sales of similar properties in the downtown area support a lower assessment;
- (2) the Properties' land values are incorrect due to the site areas being inaccurate; and
- (3) the assessments should be \$48,000 for map U5, Lot 23 and \$76,800 for map U5, Lot24 based

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on market values of \$46,200 and \$76,800 respectively and the department of revenue administration's equalization ratio of 1.04.

The Town argued the assessments were proper because:

- (1) the Taxpayer's comparable sales were not arm's-length transactions and therefore not reliable indicators of value;
- (2) other sales of properties in the downtown area support the assessments; and
- (3) the downtown area is a difficult area to assess given the significant commercial development in other sections of the Town.

Subsequent to the hearing, the board ordered its review appraiser, Mr. Scott Bartlett, to inspect the Properties, review the file, including the tape of the hearing, and file a report. The review appraiser's report was provided to the parties and they were given an opportunity to comment on it. 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 or conclusion.

Board's Rulings

Based on the evidence and testimony, the board finds the assessment of the two Properties combined should be \$140,000. The board finds the review appraiser's report to be the best evidence of value submitted. In his report, the review appraiser valued the Properties as one contiguous property and the board has accepted that combined value. However, the board recognizes the two Properties are separate entities and may be conveyed individually, and the Town should allocate the ordered assessment between the lands and buildings of the Properties in accordance with its assessing practices.

The parties submitted several comparable sales from the downtown Tilton area for

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consideration as indicators of value for the Properties. However, given the numerous unanswered questions surrounding many of the sales as to their truly arm's-length nature or their comparability to the Properties the board was unable to give them much probative value. Several of the comparable properties had upper levels that contained apartments or office space and it was difficult to make reliable adjustments for these factors to arrive at a reliable estimate of value for the Properties.

The review appraiser requested and received income and expense information for the Properties from the Taxpayer's representative. In Mr. Bartlett's report, he states that in his opinion, the income and expenses provided by the Taxpayer appear to be reasonable and the board concurs. Although, as Mr Bartlett indicated, some of the expense data from the Taxpayer was in the form of an allocation as he owns multiple properties, it was the most pertinent evidence available.

Although Mr. Bartlett performed both a sales comparison approach analysis and an income approach analysis, for the reason previously stated, the sales comparison approach has been given minimal weight and the board's primary focus has been on the income analysis. The income analysis relies on factual data supplied by the Taxpayer and the Town did not rebut or refute this evidence during its opportunity to respond to the Mr. Bartlett's report. For these reasons, the board has relied on Mr Bartlett's income analysis as the best evidence in this case.

If the taxes have been paid, the amount paid on the value in excess of \$140,000 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 1998. Until the Town

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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.

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Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to James Miller, Representative for Dwight D. Barton, Taxpayer; and Chairman, Board of Selectmen of Tilton.

Date: December 3, 1999

Lynn M. Wheeler, Clerk

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