

Township Realty LLC

v.

Town of Milford

Docket No.: 17522-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$183,800 (land \$119,200; buildings \$64,600) on a .75-acre lot and building (the "Property"). The Taxpayer also owns, but did not appeal, a vacant lot assessed at \$6,300. 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 carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property was purchased through an arm's-length transaction for

\$90,000. The sale occurred after the Property had been marketed through a real estate broker for an extended period;

(2) a real estate broker's price opinion estimated a March 1999 market value of \$100,000;

(3) the Property is very unique due to its unusual shape and the configuration of the improvements and its purchase price is the best indicator of value;

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(4) the restrictions in the Comprehensive Shoreland Protection Act (RSA 483-B) and the municipality's zoning ordinance limit the use of the Property when the building setbacks and parking requirements are followed; and

(5) the purchase price of \$90,000 factored by the Town's equalization ratio of 1.33 determined by the department of revenue administration indicates the proper assessment should be \$119,700 ($\$90,000 \times 1.33 = \$119,700$).

The Town argued the assessment was proper because:

(1) vacant land sales in the area support a value for the land alone of \$90,000;

(2) the purchase of the Property was not an arm's-length transaction. The owners were looking to "dump" the Property and liquidate their holdings; and

(3) the previous owners had an appraisal done in 1995 for marketing purposes that estimated the Property's market value to be \$160,000.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$119,700. This assessment is based on a market value finding of \$90,000 adjusted by the 133% equalization ratio for the Town for the 1997 tax year.

The Property is a non-conforming use in a commercial/industrial district which is impacted by the following.

1) The lot is poorly configured, the building is in poor condition, needs a new roof and encompasses a majority of the lot's square footage and there is limited parking along the frontage and limited access to the Property.

2) Any change to the Property will require compliance with the Town zoning ordinance, planning regulations and RSA 483-B Comprehensive Shoreland Protection Act.

The Taxpayer testified the Property's purchase price was \$90,000 in May 1997. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an

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arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

The Town referred to the sale as a "fire sale" because the McLeods wanted to remove themselves from the apple business and were looking to "liquidate" or "get out from under" the Property and therefore suggested this was not an arm's-length transaction. The board does not agree with the Town. The Property was listed by a reputable broker for several years prior to its purchase. The former owners ("McLeods") utilized the Property as an apple cold storage building and the building was vacant for a significant period of time prior to its sale. There was no evidence to suggest that the purchase

price was not an arm's-length transaction because: 1) the Property was properly exposed to the market by a qualified broker for a significant period; 2) there were negotiations between the buyer and seller over a two to three week period; and 3) there was no indication of duress by either the buyer or the seller.

Enfield Advisory ("Mr. Boufford") prepared a brokers price opinion for the Taxpayer in March 1999. Mr. Boufford testified that he was very familiar with the Milford area and the properties along Route 101 and had reviewed properties in Manchester and Nashua which were similarly impacted by limited parking and/or access. Mr. Boufford's opinion was the most likely price the Property would command, as of March 1999, was \$100,000. He stated the price may be twenty to twenty-five percent lower as of April 1997.

The Town argued vacant land sales along Route 101 supported the assessed value on the land. The board did not find the Town's testimony to be of any value because: 1) the Town offered little to no evidence showing how the Property compared to the land sales; 2) made no adjustments for size, configuration, access, or location; and 3) offered no evidence as to the arm's-length nature of any of the sales. The board finds the lot's configuration is significantly inferior to the sales presented by the Town and could make no comparisons given the lack of information submitted.

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The Town further argued that the McLeods had an appraisal prepared in 1995 which estimated a market value of \$160,000. The Town testified that it had never seen the appraisal, could not get a copy of it and had no knowledge

of its contents other than the market value finding. Further, the Town stated a 1994 letter from the McLeods' broker stated a "quick sale" price of \$100,000 to \$150,000. The Town relied on this information in finding the Property was proportionately assessed and no abatement was warranted. This testimony is woefully inadequate to convince the board that an assessment is proper. The Town stated no interior inspection had ever been made of the Property for a number of reasons. Given the fact that both the McLeods and the current owners were challenging the assessed value of the Property, it would seem prudent for the Town to perform an interior inspection and make a diligent effort to insure the Property was properly assessed.

The board has reviewed the zoning ordinance and RSA 483-B and concurs with the Taxpayer that, given all the setback restrictions, the condition of the building, the configuration of the lot, and the lack of good parking and access, the Property has limited potential and would most likely attract marginal tenants. The board finds the best evidence of the Property's market value is its purchase price.

If the taxes have been paid for the tax year 1997, the amount paid on the value in excess of \$119,700 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 1998. 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.

With respect to the Taxpayer's requests for findings of fact and rulings of law, the board finds and rules as follows. In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.
 1. Granted.
 2. Granted.
 3. Granted.
 4. Neither granted nor denied.
 5. Granted.
 6. Granted.
 7. Granted.
 8. Granted.
 9. Granted.
 10. Granted.
 11. Granted.
 12. Neither granted nor denied. The Property has water and sewer.
 13. Granted.
 14. Granted.
 15. Granted.
 16. Granted.
 17. Granted.
 18. Granted.
 19. Granted.
 20. Granted.
 21. Granted. \$119,700.

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

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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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to John G. Cronin, Esq., counsel for Township Realty LLC, Taxpayer; and Chairman, Board of Selectmen of Milford.

Date: July 26, 1999

Lynn M. Wheeler, Clerk