

Tilsno Capital Management, LLC

v.

Town of Peterborough

Docket No.: 18339-99PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of \$289,100 (land \$61,100; buildings \$228,000) on a 1.18-acre lot with a manufacturing and warehouse building (the "Property"). The Taxpayer also owns, but did not appeal, the assessment on an adjacent 0.27-acre vacant lot. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show 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) an independent appraisal with an effective date of January 14, 1999 estimated the Property's market value to be \$158,000;
- (2) there are many factual data errors on the assessment-record card;
- (3) the Town's use of the cost approach valuation method is flawed; and
- (4) the Property's market value on April 1, 1999 was between \$180,000 and \$190,000.

The Town argued the assessment was proper because:

- (1) the Taxpayer's appraiser, while using the best available comparable sales, made some inappropriate adjustments to the sales, resulting in an inaccurate estimate of market value; and
- (2) correcting the data errors on the assessment-record card would lead to a higher assessment.

After the August 22, 2001 hearing, the board directed its review appraiser, Mr. Stephen W. Hamilton, to inspect the Property and submit a report. His December 6, 2001 report ("Report") was supplied to the parties and they were given an opportunity to file written comments with the board. Both parties filed a response.

Board's Rulings

At the hearing, the parties agreed the Property was a difficult one to value given its age, condition and location. The Taxpayer testified the assessment-record card contained many factual data errors, including the square footage of the building, the amount of office space, the number of plumbing fixtures and the use of the basement area resulting in the Town's assessment being unreliable.

The Taxpayer provided a January 14, 1999 appraisal of the Property performed by Douglas T. Whitney of Whitney Associates ("Appraisal") which estimated the market value of

the Property at \$158,000. The board reviewed the Appraisal and found some of the assumptions and conclusions drawn by the appraiser to be unsubstantiated. The Town also reviewed and critiqued the Appraisal. The Town's assessing agent, Mr. Wil Corcoran, stated that, while comparables chosen by the appraiser were the best comparables available, the Appraisal was unreliable for other reasons. The Town agreed the data errors on the assessment-record card reflected inaccuracies in the description of the building; Mr. Corcoran, however, stated if the errors, such as the amount of finished office areas and the use of the basement area, were corrected the assessment would actually be higher.

After a review of all the evidence presented, the board finds Mr. Hamilton's Report to be the best evidence of the Property's market value. The board concurs with Mr. Hamilton that the Appraisal does not have all the necessary elements to allow the reader to follow the logic behind the appraiser's conclusions and the final estimate of value. The appraiser makes some unsubstantiated assumptions and draws conclusions for which the basis is unclear. For example, as Mr. Hamilton points out, the appraiser states the land value is \$65,000, but makes no attempt to explain this determination and offers no support for this value. Similarly, in the income approach, the appraiser provides no support for his estimation of market rent or his vacancy and collection loss. Additionally, the appraiser provides no support for the capitalization rate developed, as well as the other criteria used in the income approach making it of little value. In the sales comparison approach, the adjustments made by the appraiser on the comparable sales grid have several inconsistencies and there is a general lack of explanation for the adjustments. For these reasons, Mr. Hamilton has discounted the value estimate arrived at in the Appraisal and the board concurs that this estimate of value is unreliable. At the hearing, the Taxpayer

conceded the Appraisal may not be the best or an “A,” but he testified he felt the Town’s assessment was equally inaccurate and an “F.” The board finds there are inconsistencies in both parties’ arguments, and therefore, finds the review appraiser’s April 1, 1999 value estimate of \$225,000 to be the most probative evidence presented. This value, when equalized by the Town’s .96 equalization ratio, results in an assessment of \$216,000 ($\$225,000 \times .96$). The board finds this assessment to be the most accurate and orders the Town to abate the assessment to that amount.

Ordinarily, when a taxpayer owns more than one property in a municipality but chooses to appeal the assessment on some but not all of the properties, the board must still consider the assessments on the taxpayer’s nonappealed properties in the same municipality. Appeal of the Town of Sunapee, 126 N.H. 214, 217 (1985). A taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of the properties is disproportionate. See also Bemis Brothers Bag Co. v. Claremont, 98 N.H. 446, 451 (1954) (“Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.”). Therefore, when a taxpayer owns more than one parcel, an appeal for abatement on any one property will always require consideration of the assessments of any other properties. It was not necessary for the board to review the assessment on the Taxpayer’s other property (Map U30, Lot 14) as both parties stipulated that assessment was not in dispute.

If the taxes have been paid, the amount paid on the value in excess of \$216,000 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 2000 and 2001. 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Michael Herz, Tilsno Capital Management, LLC, Taxpayer; and Chairman,

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Date: March 22, 2002

Anne M. Bourque, Deputy Clerk

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