

Eber Currier

v.

Town of Milford

Docket No.: 18517-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the tax year 2000 assessments by the “Town” on several self-storage facilities: \$790,400 (land \$305,200; buildings \$485,200) on Lot 048-014-000-000 (“Lot 14”), a 2.9-acre parcel; and \$334,100 (land \$136,100; buildings \$198,000) on Lot 048-014-200-000 (“Lot 14-2”), a 0.92-acre parcel (collectively the “Property”). 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, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show 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) the Town misused the income data he voluntarily provided, adding income from another self-storage facility owned by his wife;
- (2) the self-storage facilities were not “built for resale” and, as a result, have fewer amenities than comparable facilities, resulting in lower rents;
- (3) the appraisals prepared by a certified general appraiser support much lower market values and assessments; and
- (4) the market values estimated for each lot in the appraisals, when adjusted by the Town’s equalization ratio, is the best evidence of what the assessments should be.

The Town initially defended the assessments as proper, but, upon questioning by the board at the end of the hearing, conceded they should be reduced as follows: if the total market value of the Property was \$1,124,500, as asserted by the Town, and the equalization ratio of 0.93 is applied, the resulting total assessment should have been \$1,045,800. The Town argued no further adjustment is warranted because:

- (1) the Taxpayer failed to provide any breakdown of income and expense between the Property and other property used in the self-storage business but owned by his wife;
- (2) the Taxpayer’s actual rents were lower than market rents and a market rent of \$6.76 per square foot should be utilized (rather than \$6 per square foot used by the Taxpayer’s appraiser);
- (3) the market for self-storage facilities in the Town was good, as evidenced by the construction of additional self-storage facilities by the Taxpayer’s wife and others; and
- (4) the Taxpayer failed to meet his burden of proof.

Board’s Rulings

Based on the evidence, the board finds the proper assessment for the Property should be

based on the market values estimated in the Taxpayer's appraisals, adjusted by the 0.93 equalization ratio for tax year 2000. For Lot 14, the estimated market value is \$583,000, resulting in an assessment of \$542,200 ($(\$583,000 \times .93 = \$542,200)$ (rounded)); and for Lot 14-2, the estimated market value is \$265,000, resulting in an assessment of \$246,500 ($(\$265,000 \times .93 = \$246,500)$ (rounded)).

The parties appear to agree that the income approach is the best method of estimating the market value of the Property, but disagree as to what market rent estimate should be used. The Taxpayer's appraiser (Martin S. Doctor of Fulcrum Appraisal Service) used a market rent estimate of \$6 per square foot, based upon a survey of rents much closer in time to the assessment date. The appraiser explained that a rent in the low end of the range of the market was appropriate because the Property had fewer amenities than other self-storage facilities. The Town, in comparison, apparently surveyed rents some two years later, applied no time adjustment, and did not make any adjustments for differing amenities. The board, therefore, finds the Taxpayer's estimate of the market rent to be more reliable.

While the parties disputed other details of the income approach methodology at the hearing, these disputes had little bearing on the overall outcome. For example, the Town questioned the 10% vacancy and credit loss and 5% rebate/discount adjustments made to the gross income estimate by the Taxpayer's appraiser, but the net effect of these adjustments is the same as the 15% "vacancy and credit loss" estimate applied by the Town in its own computations. Similarly, the Town questioned the Taxpayer's imputation of a management expense of \$1.40 per square foot, but the net impact of this assumption (\$48,160) is less than the management expense estimate used by the Town (\$51,600). Furthermore, the capitalization rates

used by each party are quite comparable (13% by the Town, 10.5% by the Taxpayer (applied to a net income number with property taxes, at \$26.50 per \$1,000 of estimated value, already deducted)).

In summary, the board finds the Taxpayer's appraisals to be the best evidence of the market value of the Property, and therefore the assessment for tax year 2000 should be \$542,200 for Lot 14 and \$246,500 for Lot 14-2. The Town shall allocate these values between the land and buildings for each lot. If the taxes have been paid, the amount paid on the values in excess of these amounts 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 tax year 2001. Until the Town undergoes a general reassessment, the Town shall use the ordered assessments 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

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Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Eber Currier, Taxpayer; and Chairman, Selectmen of Milford.

Date: November 27, 2002

Anne M. Bourque, Deputy Clerk