

Calvin F. Warner

v.

Town of Milford

Docket No.: 18602-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$142,200 (land \$84,900; buildings \$57,300) on an 0.18-acre lot with a three-unit house (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 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 land value of \$84,900 is too high and is disproportionate when measured against neighboring properties on a “per thousandth of an acre” basis;
 - (2) the lot is small (0.18) acres and has inadequate parking and turning facilities;
 - (3) a 13-foot right-of-way (“easement”) exists on the lot, further reducing the utility of the lot;
- and
- (4) in January 2001 a real estate agent estimated the Property’s market value at only \$110,000 to \$112,000, well below the Town’s assessed value.

The Town argued the assessment was proper because:

- (1) the assessed value of the Property was first reduced from \$164,800 to \$152,100 during the informal reviews and then further abated to \$142,200 to take into account size and shape factors;
- (2) the Property is located in a commercial zone on Elm Street, Route 101A, the main artery leading into Town and the Village Square, located one-half mile away; and
- (3) the Town did a revaluation in tax year 2000 and used a valuation model with a \$140,000 per-acre base value for land in the commercial zone.

Subsequent to the hearing, the board took a view of the Property. On the view, the board observed the condition of the Property, the size and shape of the lot, the positioning of the improvements on the lot and the thirteen-foot right-of-way along one side of the Property.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer is entitled to an abatement based on a revised assessment of \$114,500 (land \$69,900; improvements \$44,600).

At the hearing, the Town testified the land value had been reduced 5% for the right-of-way that borders on the west end of the lot and 10% for a size adjustment due to the very small

lot size. The board finds these adjustments do not adequately reflect the inutility of the lot. There is very minimal parking on the site and tenants must park on the easterly side of the building in the right-of-way area. The owners of the rear property have been using another access way to get to their property; however, it appears they could object at any time and restrict the Taxpayer's use of the 13-foot right-of-way area. Additionally, the lot slopes downhill from the street to the rear and has steep topography at the back. The board finds an additional 15% influence factor adjustment is necessary to reflect the lot's utility, size, shape and topography for a total reduction of 30%. Applying this factor and using the Town's methodology for adjusting lot sizes of less than one acre, the revised land value becomes \$69,900 (rounded).

On the view and in the photographs submitted by the Taxpayer (Taxpayer Exhibit #2), the board noted the Property's improvements suffered significant deferred maintenance. At the hearing, the Town testified it used a CDU factor to account for the condition, desirability and utility of the structure. The board finds the Town's adjustment is insufficient to account for all the improvement's deficiencies. Because the Town uses a CDU factor with absolutely no explanation on the assessment-record card as to what it is comprised of, it is impossible for anyone to accurately determine the amount of depreciation attributable to the Property's condition. As the testimony of the Taxpayer, the photographs and the board's view indicate, the Property has had a significant amount of deferred maintenance and the board finds an additional 10% reduction for the structure's condition is warranted. Applying this revised factor yields an assessed value for the improvements of \$44,500 (rounded) and, when combined with the land value of \$69,900, a total assessment of \$114,500.

The Taxpayer's argument concerning the value of his land in relation to other properties

on a “per thousandth of an acre” basis is misplaced. It is a well-accepted assessment/appraisal precept that as the size of the item in question (building or building lot) becomes smaller, its unit value (price per square foot in this instance) becomes larger. Additionally, the realtor’s letter containing an estimate of the Property’s market value received little weight from the board as there was no supporting documentation or basis for the realtor’s opinion.

If the taxes have been paid, the amount paid on the value in excess of \$114,500 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 2001 and 2002. 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: Calvin F. Warner, Taxpayer; and Chairman, Selectmen of Milford.

Date: November 27, 2002

Anne M. Bourque, Deputy Clerk