

**A & F Realty LLC**

**v.**

**Town of Hooksett**

**Docket No.: 18616-00PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessments of \$400,500 (land \$258,000; buildings \$142,500) on Map 013, Lot 038, a 1.58-acre lot with a commercial office building; \$698,600 (land \$660,500; buildings \$38,100) on Map 013, Lot 039, a 2.57-acre lot with a quonset hut; and \$307,600 (land \$217,400; buildings \$90,200) on Map 013, Lot 041, a 1.80-acre lot with an industrial warehouse (the “Properties”). For the reasons stated below, the appeal for abatements is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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’ assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

Map 13, Lot 38

(1) this lot is assessed on a per-square-foot basis of the building at \$267.71, far in excess of the sale of three comparable commercial buildings which indicate a per-square-foot price range of between \$39.29 and \$61.62 and the sale of eight office/commercial properties in the Manchester area which indicate a range of value from \$51.65 to \$79.19; and

(2) based on those sales, Lot 38's assessed value should be \$154,000.

Map 13, Lot 39

(1) since 1998, Lot 39 has been actively marketed at \$275,000, with one purchase and sale agreement signed in 2001 for 250,000 (however, the sale was never closed due to lack of financing by the buyer); therefore, the assessment should be \$227,500 based on a market value estimate of \$250,000 and the Town's 2000 equalization ratio of .91; and

(2) the improvements are of no market value, and thus, the value of the lot should be considered as land only with demolition of existing buildings.

Map 13, Lot 41

(1) since 1998, Lot 41 has been offered for sale at \$275,000 with a purchase and sale agreement signed in 2001 for \$230,000 (however, the sale was never closed due to lack of financing by the buyer); therefore, the assessment should be \$209,300 based on a market value estimate of \$230,000 and the Town's 2000 equalization ratio of .91; and

(2) the improvements are of no market value, and thus, the value of the lot should be considered as land only with demolition of existing buildings.

The Town acknowledged that the three lots are overassessed and recommended the assessments be reduced to:

Map 13, Lot 38	\$303,400
Map 13, Lot 39	\$246,100
Map 13, Lot 41	\$235,200

Further, the Town argued the proposed assessment on Lot 38 is a result of analysis of income and expense information received from the Taxpayer and the lease of Lot 38 to the federal government (Exhibit Municipality A). The Town testified its recommended assessments for Lots 39 and 41 are as a result of revising the land-portion of the assessments to be consistent with the assessment methodology in the neighborhood and with notes on the assessment-record cards.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessments to be: Map 13, Lot 38, \$303,400; Map 13, Lot 39, \$246,100; and Map 13, Lot 41, \$235,200. The board will detail its findings separately for each lot.

#### **Map 13, Lot 38**

The Taxpayer argued the assessed value should be \$154,000 based on the submitted sales of three commercial properties (A-C) and eight other office/commercial sales in the north end of Manchester, New Hampshire. The board gives this value conclusion no weight as no documentation was provided for the calculations, it is contrary to evidence submitted on the adjoining lots and the conclusion defies logic and commonly-accepted appraisal practices.

First, at the hearing, Mr. Mongan, the Taxpayer's representative, testified he had performed an analysis and calculation to arrive at the \$154,000 estimate but did not have it with him nor was it present in any of his submissions.

Second, as will be detailed in the following sections, the market evidence presented relative to Lots 39 and 41 indicate that Lot 38 likely has a market value for the land of approximately \$230,000. Both parties agreed the improvements on Lot 38, while not the most extensive that could be built, were certainly new and functional, and thus, have contributory value and would not be demolished if Lot 38 was sold. Thus, the board concludes the improvements add some value to the site and even if some depreciation is accounted for in the Town's assessed value, the contributory value of the building and improvements is somewhere in the vicinity of \$100,000. Thus, the total market value of Lot 38 of approximately \$330,000 as estimated by the Town is certainly more logical and supportable than the Taxpayer's \$154,000 estimate.

Third, Mr. Mongan stated he analyzed sales A through C on a sales price per square foot of building area and then applied that value conclusion to estimate the value of Lot 38. The board finds the three properties utilized as comparables are of such larger square footage and, in some cases, differing uses, that such an analysis is meaningless. The subject Property is comprised of a 1,496-square-foot office building with an attached garage. The comparables are all in excess of 20,000 square feet and have been used as supermarket/commercial space, office and research and development space, and distribution/warehouse uses. Consequently, the comparables are all significantly larger and are generally of less intensive uses than Lot 38's improvements. Thus, without significant adjustments for size (economy of scale) and use, applying the unadjusted price per square foot to the building on Lot 38 results in an unreliable value conclusion.

The board also gives little weight to the Town's income approach calculation based on

the contract lease. First, the evidence related solely to Lot 38's fairly unique contract rent with no market rent data or analysis. Second, the testimony was conflicting or uncertain as to the actual gross income of Lot 38 and a number of the Town's other assumptions (e.g., the capitalization rate and reimbursement of taxes), and consequently, does not lead to a highly reliable or supportable estimate of value.

However, as the board has noted above, combining a market value estimate of the lot of \$230,000 and a reasonably depreciated value of the improvements of \$100,000 supports the Town's recommended assessed value of \$303,400 (which, if equalized, provides an indicated market value of \$333,400 ( $303,400 \div .91$ )).

#### Map 13, Lots 39 and 41

The board will address these lots collectively as the Taxpayer's evidence and the Town's recommended adjustments are parallel for both lots. While both lots have not sold, the board finds the asking price and executed, but not consummated, purchase and sales agreement are some indication of Lots 39's and 41's market value. The Town's recommended assessment for each of the two lots is based on revising the land valuation calculation to be consistent with the methodology in the area and to correct for conditions noted on the assessment-record card, but not included in the land calculation. The board finds the resulting assessments of \$246,100 and \$235,200 for Lots 39 and 41, respectively, if equalized, are reasonable based on market value indications of the Properties' listing and purchase and sales agreement history. While the Town's revised assessment does include value for the improvements, which both parties agreed were likely to be torn down if sold, the board must consider whether the total assessed value is proportional. In this case, if the board were not to include the Town's improvements value, the

resulting land-only value would (if equalized) be significantly less than the evidence has shown to be the market value of both lots.<sup>1</sup> The current assessment methodology's allocation between the land and buildings is flawed and is an indication that the current reassessment for 2003 is certainly needed.

If the taxes have been paid, the amount paid on the value in excess of the values listed above 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. 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

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<sup>1</sup>"Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899); Edes v. Boardman, 58 N.H. 580, 588-89 (1879) ("Determining a taxpayer's share of the common tax burden is not determined by technical rules and an innocuous error in one portion of their estate does not necessarily prove disproportionate assessment of the whole where there could exist an offsetting undervaluation on another component.")

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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Robert P. Mongan, Taxpayer's representative; and Chairman, Selectmen of Hooksett.

Date: December 10, 2002

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Anne M. Bourque, Deputy Clerk