

**Digital Equipment Corporation**  
**v.**  
**Town of Hudson**

**Docket Nos. 3872-87 and 4400-88**

**DECISION**

These two appeals, having been consolidated for hearing, were heard, as scheduled, on September 7, 1989. The Taxpayer was represented by George R. Moore, Esq., Michael F. Babini, Property Tax Manager for Digital Equipment Corporation and Charles W. Thompson, Appraiser. The Town was represented by John Ranigan, Esq. and Richard Ethier, Assessor.

The Taxpayer appeals, pursuant to RSA 76:16-a, the 1987 assessment of \$1,693,000 (land, \$663,000; buildings, \$1,038,000) and the 1988 land only assessment of \$1,335,000. The property consists of 171 acres of land and a three story institutional building known as the "Friary".

Neither party challenged the Department of Revenue Administration's equalization ratios of 34% and 31% for the 1987 and 1988 tax years respectively for the Town of Hudson. Based on those ratios, the Taxpayer's assessments equate to market values of \$4,979,412 for 1987 and \$4,306,452 for 1988.

As stated in the Board's notice of hearing, the first issue to be heard and decided was whether the Taxpayer filed an appeal for abatement in 1987 with the Town in a timely fashion.

Documents show the Taxpayer filed an appeal with the Town on October 26, 1987, and was received by the Town on October 27, 1987. The Town of Hudson sends out tax bills twice a year as provided by RSA 76:15-a. The appeal for abatement filed by the Taxpayer was based on assessment information received on the first tax bill for 1987 as the final bill was not sent out until approximately two weeks after the filing of the appeal.

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The Board rules that the appeal was filed in a timely manner. While the Board would caution taxpayers not to routinely file appeals before the final tax bill is issued (as there is the possibility of a different assessment occurring on the final bill), the Board finds, in this case, the Town actually had more than the statutory time in which to review the appeal.

As to the correct assessment, the Taxpayer argued that their land was assessed on a per acre basis five to ten times higher than the land of the other two comparable industrial properties in Hudson. Further, they argued that the building was over assessed due to its physical deterioration and functional obsolescence.

Mr. Thompson testified that in his opinion the highest and best use of the property was for industrial development and that the present building had no contributory value due to a combination of physical and functional obsolescence. He testified that in his opinion the market value in 1988 of the property as vacant industrial land was \$14,800,000. He estimated that the market value, with the building, would be approximately 1 million less; \$815,000 for the actual demolition costs and some extra for the risk of the demolition process.

Mr. Ethier argued that the property was one of the best undeveloped industrial sites in southern New Hampshire with both public water and sewer available. He testified that a \$200,000 reduction in the building assessment was granted by the Town in 1987 to recognize the reduced utility of the building due its physical and functional problem. Mr. Ethier testified that in 1987 the value on the land was, in his opinion, too low, but it was offset by the building value and that in 1988, after the decision was made by Digital to remove the building, the land assessment was properly increased to \$1,335,000 to more closely reflect its relationship to market value. Mr. Ethier testified that, in his opinion, the 1988 market value of the property was approximately \$7,500,000. Mr. Ethier argued that the total individual assessments (land and buildings) of the two comparable industrial properties were reasonable in relation to their equalized market values. He stated that it was not correct to compare, as the Taxpayer was doing, only the land portions of the assessments to show disproportionality.

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In regard to the Taxpayer's allegation the Board rules as follows.

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same . . . .

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board recognizes that the case at bar presents a difficult assessing problem in trying to determine what is the proper assessment of a property in transition with an obsolete building losing value (even up to the point where it costs substantially to remove it) while the land on which it sits is dramatically increasing in value for another use.

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The Taxpayer would have the Board believe that their land and building assessments can and should be viewed separately and distinctly in determining proportional assessment. They argue that, "since there is not evidence that the building had any transmissible value in 1987, the proper taxation should be based upon the land assessment of \$663,000." Trial Memorandum of the Petitioner Digital Equipment Corporation. Further, the Taxpayer would have the Board believe that their 1988 assessment should be adjusted to be in line with the land values of the other two industrial parcels in Town." . . . the Taxpayer can demonstrate disproportionality within all other similar industrial land situated within the Town of Hudson. Clearly, Taxpayers with raw, unused tracts of industrial land within the taxing jurisdiction should be treated in rough equivalence and not be so disproportionately treated as to require one Taxpayer to shoulder more than double the burden of other, similarly situated properties." Id.

The Board rules that the total land and building assessment is what must be focused on to determine whether the Taxpayer is disproportionately assessed or not. The Courts have held that all portions of a Taxpayer's property must be considered in determining their fair share of the common burden.

. . . "the fact that some classes of their estate were appraised too high would not entitle them to an abatement if the error were neutralized by an undervaluation of other estate. 'Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.' Edes v. Boardman, 58 N.H. 580, 588, overruling Dewey v. Stratford, 42 N.H. 282, 289." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200

For the Board to reduce the Taxpayer's assessments would be analogous to a weights and measure inspector sawing off the yard stick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick.

The Courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, -not just comparison to a few other similar properties. "Justice requires that it (the whole property) should be appraised for taxation at the same ratio to its true value as the

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assessed value of all the other taxable estate bears to its true value. . . . The ground upon which an abatement is granted is the reduction of the plaintiffs assessment to their share of the tax. It is not granted merely to make their assessments similar with the assessment of other Taxpayers in the same business or owning the same property. Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200 (emphasis added).

The Board finds that the land assessments of Taxpayers property and the two comparables are grossly undervalued and that it is the apparent overassessment of the building components that bring the total assessments anywheres near to their proper share of the tax burden.

The Board finds that there is conflicting testimony as to the 1988 market value of the Taxpayer's property, but that interestingly enough, the Taxpayer's estimate of \$14,800,000 was nearly twice as high as the Town's estimate of \$7,500,000. The Board finds the 1988 equalization ratio for Hudson as determined by the Department of Revenue Administration was 31%. The Board rules that since the equalization ratio determined each year by the Department of Revenue Administration is derived from an analysis of sales of all types of property within the Town, it is the best ratio available for measuring how one property relates to the assessed value of all other properties. The Board finds that the market value figures indicate an assessment range of \$2,325,000 ( $\$7,500,000 \times .31$ ) to \$4,588,000 ( $\$14,800,000 \times .31$ ).

As these calculations indicate, the Taxpayer if anything, is paying less than their fair share of the common burden. For the Board to order an abatement would make the Taxpayer's share of the tax burden even less equitable.

The Board therefore rules the Taxpayer has failed to prove that the assessment is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayer's just share of the common tax burden. The ruling is, therefore: Request for abatement denied.

The Board rules on the Towns Request for Findings as follows:

1. Granted
2. Granted
3. Granted
4. Neither granted nor denied

5. Granted

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6. Granted
7. Granted
8. Denied
9. Neither granted nor denied
10. Granted
11. Granted
12. Granted in part; Denied in part
13. Granted in part; Denied in part
14. Granted in part; Denied in part

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

(Ms. Richmond did not sit.)

Anne S. Richmond, Esq., Chairman

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George Twigg, III, Member

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Peter J. Donahue, Member

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Paul B. Franklin, Member  
Acting Chairman

Date: October 17, 1989

I certify that copies of the within Decision have been mailed this date, postage prepaid, to George R. Moore, Esq., counsel for Digital Equipment Corporation, taxpayer; and the Chairman, Selectmen of Hudson.

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Michele E. LeBrun, Clerk

Date: October 17, 1989

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