

Murray W. Finard, Trustee  
v.  
City of Lebanon

Docket Nos. 5563-88, 7701-89, and 9751-90

DECISION

These appeals were consolidated for hearing purposes.

The Taxpayer appeals, pursuant to RSA 76:16-a, the 1988, 1989, and 1990 assessments as listed:

	<u>Land</u>	<u>Building</u>	<u>Total</u>
Map 20, Lot 1	\$133,200	\$1,225,300	\$1,358,500
Map 20, Lot 2	64,000	0	64,000
Map 20, Lot 3	59,200	0	59,200
Map 20, Lot 4	69,600	0	69,600
Map 20, Lot 5	<u>220,000</u>	<u>2,114,400</u>	<u>2,334,400</u>
Total	\$546,000	\$3,339,700	\$3,885,700

The five separately assessed parcels are contiguous. The building on Lot 1 consists of 15,280 square feet of retail space occupied by two furniture stores and 11,900 square feet of movie-theater space. The building on Lot 5 consists of 51,606 square feet occupied by Grand Union. The other adjacent lots provide parking and access to the buildings. The property is located on Route 4 and 10 and is known as the Miracle Mile Shopping Center.

The City was completely revalued in 1986. The equalization ratios as determined by the Department of Revenue Administration for the 1988, 1989, and 1990 tax years are 68 percent, 66 percent, and 72 percent, respectively.

Mr. Stusse, agent for the Taxpayer, submitted an estimate of value by the income approach (Exhibit TP-3). Mr. Stusse used the contract rents for the furniture stores as he felt they were market rents and increased the Grand Union rent and Loews Theatre rent to reflect what he felt were market rents. Using estimated vacancy and expense rates and a capitalization rate of 11.2 percent, he estimated the market value at \$4,457,000 and an indicated assessment of \$3,253,600 with the application of an average ratio of 73 percent.

Mr. Stusse also submitted an estimate by the cost approach (Exhibit TP-6) that indicated a proper assessed value of \$3,224,059.

In support of his valuations, Mr. Stusse submitted Exhibit TP-5, a sale in October 1987 of the West Lebanon Plaza on Route 12A, Lebanon, for \$4,900,000.

Mr. Johnson, City Assessor, stated that this appeal and the appeal of the West Lebanon Plaza had caused him to review the assessments of several shopping plazas in the City. As a result, he discerned that the Upper Valley Shopping Plaza and West Lebanon Plaza were underassessed and thus increased their assessments to make them proportional and more comparable to Miracle Mile Shopping Plaza. He submitted Exhibit Cy-B which summarized the finally adjusted land and building components as follows:

	<u>Land Area</u>	<u>Land Assessmnt</u>	<u>Building Area</u>	<u>Building Assessmnt</u>
Miracle Mile Shopping Plaza	8.52 acres	\$64,085/A	78,786	\$42.39/sqft
West Lebanon Plaza	22.4 acres	\$100,000/A	149,567	\$37.03/sqft
Upper Valley Plaza	30.0 acres	\$100,000/A	274,056	\$40.93/sqft

Mr. Johnson argued the subject property's higher building unit value was largely due to the other plazas not containing a movie theater, which is more expensive on a per-square-foot basis.

Mr. Johnson also noted that while the sale of the West Lebanon Plaza was for \$4,900,000 in 1987, the City assessed the plaza in 1988 for \$7,398,900, appraising the value of the leasehold interests of several tenants with long-term leases that was not recognized in the transfer.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find both parties had credible expert witnesses, but on the balance of the evidence the Taxpayer failed to carry its burden and prove any disproportionality. The City also supported its property assessment.

The board finds that land adjacent to the Taxpayer was selling for approximately \$100,000 per acre, while assessed for \$64,000 per acre. While not having any good sales, the City did recognize the better location of the Upper Valley Plaza and the West Lebanon Plaza by assessing the two- and three-times larger parcels at \$100,000 per acre. The City also supported its building valuation by noting the Taxpayer's property included a more expensive component, the movie theater, that the comparables did not. Further, the board finds that the Taxpayer's building is one half and one third as large as the comparables and that the market generally recognizes a slightly higher price and value per square foot for smaller buildings.

The board finds that the Taxpayer's income approach does not account for the ability, albeit slight, for the Taxpayer to expand the theater and parking.

The board also finds that the Taxpayer did not submit a thorough market analysis in support of the market rents used in the income estimates.

Therefore, the appeal for abatement is denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

May 14, 1991

Paul B. Franklin

Ignatius MacLellan

Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to David Stusse, representing the Taxpayer, and to the Chairman, Board of Assessors, City of Lebanon.

Marjorie J. West, Clerk IV

May 14, 1991

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