

Treasure Masters Corporation

v.

Town of Derry

Docket No.: 6943-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$6,740,500 (land, \$620,200; buildings, \$6,120,300) on its real estate on Treasure Lane, consisting of a manufacturing and warehouse buildings on 8.02 acres (the Property). The Town indicated that an abatement had been granted in May, 1992 to an assessment of \$5,500,500 (land, \$620,200; buildings, \$4,880,300). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the loft area was overassessed based on its utility;

Treasure Masters Corporation

v. Town of Derry

Docket No.: 6943-89

Page 2

(2) the Property was disproportionately assessed in comparison to several other industrial properties in Derry; and

(3) the primary site used only 4.7 acres rather than 6 as assessed by the Town.

The Town submitted an appraisal report which included estimates of value by the cost, market and income approaches and an assessment comparison of comparable properties.

The Town argued the assessment was proper because:

(1) it is based on the income approach to value from leases of the subject property and other properties in Derry;

(2) the Hadco property assessment was admittedly incorrect and too low and thus was not comparable without corrections;

(3) the loft (multi-use storage area) did provide some utility to the Taxpayer and thus was of similar value as other low cost warehousing facilities;

(4) all industrial land assessments in Derry were calculated with the primary site estimated at twice the size of the gross leasable building area and then rounded to the nearest acre; and

(5) the sale of the Allen Bradley and the sales negotiations of the Klev-Bro supports the Town's assessments.

Treasure Masters Corporation

v. Town of Derry

Docket No.: 6943-89

Page 3

Based on the evidence, we find the correct assessment should be \$5,288,150 (land \$530,200 and building \$4,757,950). This assessment is ordered because: (1) the actual area used for the primary site versus a calculated area is a more reasonable and market related method for valuing the land; and (2) while the loft is of some value in the market (as indicated by the Taxpayer's tenant) its contributory value is estimated to be only half of the \$244,700 value assigned to it by the Town.

The board finds the Taxpayer's Property, with these two adjustments, was not overassessed. However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick 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. E.g., Id.

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry its burden, the Taxpayer must make a showing of the

Treasure Masters Corporation

v. Town of Derry

Docket No.: 6943-89

Page 4

Property's fair market value. This value will then be compared to the Property's assessment and the level of assessments generally in the Town.

Treasure Masters Corporation

v. Town of Derry

Docket No.: 6943-89

Page 5

See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

However, in arriving at its decision the board uses its experience, technical competence and specialized knowledge in the evaluation of the evidence. See RSA 541-A:18, v(b).

If the taxes have been paid, the amount paid on the value in excess of \$5,288,150 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul E. Trombi, representing the Taxpayer; and Chairman, Selectmen of Derry.

Dated: June 26, 1992

Valerie B. Lanigan, Clerk

0007

Treasure Masters Corporation

v. Town of Derry

Docket No.: 6943-89

Page 6

Treasure Masters Corporation

v.

Town of Derry

Docket No. 6943-89

ORDER RE REQUEST FOR REHEARING

On July 16, 1992, the board of tax and land appeals (board) received a request for rehearing from the Taxpayers for the following reasons:

- 1) a 1987 appraisal was not submitted at the hearing;
- 2) implications of a possible "town-wide revaluation" as mentioned in a newspaper;
- 3) the Town did not review the Hadco assessment relative to the Taxpayer's appeal; and
- 4) the Town did not substantiate the value of other minimal storage areas such as the Taxpayer's attic.

The board denies the Taxpayer's request for a rehearing for the following reasons:

- 1) the Taxpayer referred to an appraisal during the hearing but did not submit

Treasure Masters Corporation

v. Town of Derry

Docket No.: 6943-89

Page 7

it; "[A] rehearing will not be granted to consider evidence previously available to the requesting party but not presented at the original hearing." Board rule Tax 201.05(d)

Treasure Masters Corporation v. Town of Derry

2

2) the issue of the need for a "town-wide revaluation," being separately addressed under the board's RSA 71-B:16 authority, has no direct bearing on the Taxpayer's individual appeal for the 1989 tax year;

3) while not specifically mentioned by name in the board's decision, the board found there was evidence of possible underassessment of the Hadco property and thus it was not a comparably assessed property; regardless, the Taxpayer must show the property is assessed higher than the general level of assessment for the whole town, not just higher than similar property. (See Amoskeag Mfg. Co. v. City of Manchester, 70 NH 200 (1899) and Appeal of Town of Sunapee, 126 N.H., 214 (1985)); and

4) the board did find in its decision that the loft area was overassessed but, based upon the evidence submitted, it was not of zero value as argued by the Taxpayer.

Therefore, the board denies the Taxpayer's request as the Taxpayer did not

Treasure Masters Corporation

v. Town of Derry

Docket No.: 6943-89

Page 8

present any new evidence that existed but was unavailable at the time of the hearing, nor did it present any new or disputed legal issues.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

Treasure Masters Corporation v. Town of Derry

3

I certify that copies of the within Order have been mailed this date, postage prepaid, to Paul E. Trombi, representing the Taxpayer; and to the Chairman, Board of Selectmen, Town of Derry.

August 13, 1992

Valerie B. Lanigan, Clerk

Treasure Masters Corporation

v. Town of Derry

Docket No.: 6943-89

Page 9

1002