Universal Packaging Corp. / Hodge Corporation

v.

City of Concord

Docket No.: 9009-90

and

Universal Packaging Corp.

v.

City of Concord

Docket Nos.: 12266-91PT and 13499-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990, 1991 and 1992 assessments of:

$455,800 (land $362,200; buildings $93,600) on Lot 10, a 9.7-acre lot with an accessory building;

$320,000 (land $229,600; buildings $90,400) on Lot 11, a 2.46-acre lot with a warehouse; and

$94,000 on Lot 12, a vacant, 24,050 square-foot lot (the Properties).

The total assessment for 1990, 1991 and 1992 was $869,800. The parties stipulated that the DRA determined the equalization ratios for Concord to be as follows: 1990 = 100%; 1991 = 108%; and 1992 = 120%. For the reasons stated below, the appeals for abatements are denied.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to meet their burden and prove disproportionality.

The Taxpayers argued the assessments were excessive because:

(1) an appraisal performed by Capitol Appraisal Associates found the following market values:

Appraisal Date	Lot 5-1-10	Lot 5-1-11
As of 4/1/90	$329,000	$403,000
As of 4/1/91	$299,000	$365,000
As of 4/1/92	$254,000	$317,000;

(2) a subdivision plan approved by the City in 1985 combined lots 11 and 12 and part of lot 10 into one lot. Two separate lots were thus created (lot 11 of 4.892 acres and lot 10 of 7.824 acres.);

(3) lot 11 has as its highest and best use an accessory industrial property (parking and storage) to the main UPC plant adjoining in the Town of Bow;

(4) lot 10, an undeveloped parcel, has a highest and best use as land held for future industrial development;

(5) the City's waste water treatment plant is located just northerly, across Hall Street from the Property; (the plant), and periodically creates unpleasant odors in the neighborhood;

(6) the use of Lot 11 is auxiliary to the UPC manufacturing facility located

just south of its subject lot in the Town of Bow; and

(7) the proper approach to valuation would be to appraise the primary site (4.892 acres) and the secondary site (7.824 acres), totaling 12.716 acres.

The City argued the assessments were proper because:

(1) lot 11 and 12 are integral properties to the main UPC plant in Bow;

(2) the Taxpayers' sale #3 is fatally flawed (wrong selling price by a factor of 2); and

(3) the Taxpayers' sale #2 usable size is 1.75 acres, not 2.5 acres.

(4) an appraisal prepared by the City estimated the unadjusted market value of the Property as $1,225,000 in 1990 and $1,100,000 in 1991;

(5) the Properties' location is ideal being close to both I-89 and I-93 with easy access;

(6) the RDV (redevelopment) zone is `less restrictive' than the four zoning districts it encompasses (BD, MB, BA, and BB);

(7) the RDV extends northerly to the inner City, intended to provide an area for development of new economic activities, commercial offices, and light manufacturing;

(8) the odor from the waste-water-treatment plant has only a marginal, negative effect, if any, on industrial property while it could have a measurable detrimental effect on commercial or residential property;

Board's Rulings

The parties agreed that in order to value one of the parts, the value of the whole must be considered as well as the contributory value of each of the

parts. The Taxpayers' appraiser conceded that he made no positive adjustment to lot 11 located in Concord, which includes a paved parking lot, and dry storage warehouse, juxtaposed with the UPC factory in Bow which would

recognize a synergistic relationship between the two.

The board views the Property as two lots for valuation purposes... regardless of title issues. (Lot 10, 7.824 acres unimproved and lot 11, 4.892 acres.)

No conclusive evidence was presented to establish that the RDV zone has a negative effect on property value due to increased regulation.

The alleged negative effect of the odors emanating from the sewer treatment plant on Hall Street was never quantified to show a measurable diminution in value of the subject light industrial property.

The value in use, versus the value in place theory was not applied. The value of the whole is greater than the sum of the parts.

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the City supported the Property's assessment.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John D. Pfeifle, Plant Manager of Universal Packaging Corp.; Margaret H. Nelson, Esq., Agent for Universal Packaging Corp. and Hodge Corporation, Taxpayer; and Chairman, Board of Assessors, City of Concord.

Dated: January 11, 1994

Valerie B. Lanigan, Clerk