Hi Tension Realty Corp.
Lockheed Sanders, Inc.

v.

Town of Hudson

Docket Nos.: 9305-90PT, 11546-91PT and 14375-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" assessments (listed next) on a 171-acre lot containing two research and development buildings with office and production space (the Property).

Year	Land	Buildings	Total
1990	$618,000	$12,356,000	$12,974,000
1991	$4,771,600	$26,560,100	$31,331,700
1993	$4,771,600	$26,560,100	$31,331,700

The Taxpayer also owned, but did not appeal, another lot in the Town assessed at $8,000 in 1990 and $36,000 in 1991 and 1993. For the reasons stated below, the appeal for abatement is granted for 1990 but denied for 1991 and 1993.

Burden of Proof

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden for the 1990 appeal but did not carry this burden for 1991 and 1993.

Taxpayer's Arguments

The Taxpayer argued the assessments were excessive for the following reasons and the Taxpayer presented the following other evidence and arguments:

(1) the Taxpayer's appraiser, Mr. Thompson, estimated a $24,000,000 1990 value and a $21,000,000 1991 value (An appraisal was submitted, which employed the discounted cash flow (DCF), the direct capitalization and the comparative sales approaches to value.);

(2) there are certain physical and functional deficiencies in the buildings such as Pope Technology Park building one (PTP 1) has 280 heat pumps and building two (PTP 2) has 168 heat pumps, which require frequent replacement;

(3) there was a very limited and downturned market for this type of property (large industrial) due to economic factors;

(4) the cost approach should not be used to value this Property because cost would not equal value, no one was constructing new buildings such as this and existing properties were available; and

(5) while the sales approach was used, there were very few good comparable and qualified sales.

Town's Arguments

The Town argued the assessments were proper for the following reasons and presented the following other evidence and arguments:

(1) the Taxpayer's original agent, Mr. Stusse, performed an analysis that resulted in the following values (These reports were submitted.):

$36,417,900 for 1989;

$30,041,400 for 1990; and

$27,164,000 for 1991;

(2) these original figures supported the equalized assessments, which were as follows:

$37,068,570 for 1990; and

$29,839,714 for 1991;

(3) the former assessor, Mr. Ethier, testified about how the 1990 assessment had been set (first based on actual costs with adjustments and then in 1990 based on Mr. Stusse's costs conclusion);

(4) Mr. Roberge testified about the 1991 revaluation generally and about how the 1991 and 1993 assessments were calculated and what reviews had occurred;

(5) PTP 2 was incorrectly measured (approximately 6,000 square feet not captured on assessment card), resulting in an $254,000 underassessment;

(6) the assessments were consistent with a trended original cost less depreciation, using Handy-Whitman;

(7) the cost approach has application to valuing the Property because: a) the Property is not an investment property (for stream of income), and thus, the

income approach is not applicable; b) there were no similar-sized sales, and

thus, the sales approach was not applicable; and c) the Property would be owner-occupied and was built for the Taxpayer's specific use; and

(8) Mr. Blais performed a separate analysis that concluded proper assessments of $12,250.000 for 1990 ($724,000 overassessment) and $34,650,000 for 1991 ($3,318,300 underassessment).

Board's Rulings

Based on the evidence, the board rules as follows:

1) for 1990 the board orders an assessment of $11,488,300, which equates to a market value of $32,823,700; and

2) for 1991 and 1993, the board finds the Taxpayer did not show overassessment.

Property Description

The board knows the parties are familiar with the Property's description. Nonetheless, a brief description of the Property is essential because the Property's attributes play a key role in understanding the Property's value and the board's ultimate decision.

The land consists of 171 acres with 900 feet of frontage on Route 3A and 2,773 feet of frontage on the Merrimack River. The lot is generally level with favorable conditions for the existing development and for future development. The Property includes a 3,000 linear foot two-lane paved interior road, which was obviously located to serve the existing buildings and to enable future development on the two large vacant portions of the lot. See Taxpayer Ex. 1, Ex. 2. The lot is nicely landscaped with a campus setting,

excellent parking and a good to excellent location in southern New Hampshire

near the Massachusetts border. See Taxpayer Ex. 3. A review of the maps and photographs demonstrates that this is a well-planned development with an excellent overall site.

The Property has two large buildings that were built in 1983: PTP 1 -- a 300,000 square foot research and development building; and PTP 2 -- a 250,000 square foot research and development and manufacturing building. The site and the buildings have been tailored to the Taxpayer's specific use.

One overall comment warrants mention now. Given the Property's size and uniqueness, the Taxpayer should have done substantially more research and analysis, especially given the equalized values involved.

Equalized Values	
1990	$37,068,600
1991	$29,839,700
1993	$26,552,300

1990 Appeal

The board presents its brief analysis on the 1990 appeal now for chronological reasons.

The board's decision to abate the 1990 taxes, using a $11,488,300 assessment, was based on the board's findings: a) that for tax years 1991 and 1993 the Taxpayer did not show the equalized assessments were excessive; but, b) that the approximately $7.3 million difference between the 1990 and 1991 equalized assessments was excessive.

1990 equalized assessment $37,068,600.

1991 equalized assessment $29,839,700.

While the difference between the two equalized assessments was approximately $7.3 million, the evidence indicated the market had declined from 1990 to 1991 by only approximately 10%. The 1991 equalized assessment multiplied by 1.10 for the time adjustment results in a 1990 market estimate of $32,823,700 and a $11,488,300 1990 assessment.

The burden is on the Taxpayer to show overassessment, but the board strives for consistency in its decisions from year to year. Thus, adjusting the 1990 assessment is appropriate to ensure reasonable consistency.

Another major factor in granting the 1990 abatement was that the Town's 1990 equalization ratio was 35%. Obviously, with such a low ratio, it is difficult to trust the accuracy of the assessment even if the 1990 assessment was based on information provided by the Taxpayer to the Town.

If the taxes have been paid for tax year 1990, the amount paid on the 1990 assessment in excess of $11,488,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

1991 and 1993 Appeals

The board denies abatements for 1991 and 1993 for three basic reasons:

1) the Taxpayer's appraisal was not accepted as determinative of market value;

2) the assessments were consistent with the original value estimates presented by the Taxpayer to the Town; and

3) the Town adequately explained the basis of the assessments, and the board was confident that the Town had made a good-faith effort to arrive at a

proper assessment after reviewing and considering information available to it and after consulting with the Taxpayer.

There can be no doubt that valuing a property of this size and value is a difficult task, requiring, quite frankly, more research and analysis than presented by the parties. Nonetheless, the Town explained how it arrived at the assessments and the steps taken to review the assessment both independently and with the Taxpayer's input. Thus, the board is convinced that the Town made a good-faith effort to properly assess this Property. Therefore, the burden is on the Taxpayer to show why the assessment was excessive.

Initially, the board concludes the Property's highest and best use is as presently used with future development potential in the two large undeveloped areas. This use would be for single-users, at least by building, for research, development and light manufacturing with sufficient office support. This Property would not be utilized as a multi-tenant property. The Taxpayer's expert, Mr. Thompson, agreed that multi-tenant would not be highest and best use.

We now review the Taxpayer's evidence.

The board did not accept Mr. Thompson's value conclusion for the following reasons.

1) Mr. Thompson did insufficient analysis given the Property's size and value. Specifically, the appraiser should have done an analysis to determine the appropriate geographical region for marketing this type of property. This Property would probably be marketed and looked at by prospective purchasers from throughout New England, and the appraisal should have paralleled that.

We also note that Mr. Thompson may not have been given enough time by his client to prepare a more thoroughly researched appraisal. Mr. Thompson's appraisal was dated August 22, 1994. This was after the case had originally been scheduled (April 21, 1994 hearing date) but then continued. By a July 11, 1994

order, the case was rescheduled to September 7, 1994, and the Thompson appraisal was supplied to the Town 14 days before September 7, 1994. This timing is not determinative to the decision, but it raises the issue of whether Mr. Thompson had sufficient time to appraise the Property.

2) The board finds the comparable sales approach, using a larger regional market, would be the best indicator of the Property's value. This was not done by either party. The cost approach would also be applicable because the Property's highest and best use is for a single-user such as the Taxpayer. Even without valuing the Property as a special-use property, it is appropriate to value a property based on marketing such property to prospective purchasers similar to the Taxpayer. "The cost approach is used to estimate the market value of proposed construction, special-purpose properties, <u>and other properties that are not frequently exchanged in the market.</u>" Appraisal Institute, <u>The Appraisal of Real Estate</u> 319 (10th ed. 1992) (emphasis added). The income approach, given the owner-occupant highest and best use, does not seem applicable, and there was insufficient information to support any analysis based on a sale-and-lease-back arrangement.

3) The Taxpayer's appraisal underestimated the value of the undeveloped land. The Taxpayer's appraiser valued the land at $1,100,000 while the Town's equalized value for the undeveloped land was approximately $2,680,100. The

board finds the underdeveloped land has a substantial value that needs to be recognized.

Three other factors and notes need to be presented. First, Mr. Stusse originally reviewed the assessments and performed a value analysis that indicated the following.

Year	Stusse	Equalized Assessment
1989	$36,417,900	n/a
1990	$30,041,400	$37,068,570
1991	$27,164,000	$29,839,714

What is interesting is that the Town used certain information from the Taxpayer in originally establishing the 1990 assessment and checking the 1991 assessment. Specifically, the 1990 assessment was directly derived from a 1989 Stusse cost estimate of $37,068,600 equalized by the 1990 ratio of .35 ($37,068,600 x .35 = $12,974,000). Nonetheless, the Taxpayer was still not happy with the 1990 assessment. The board's ordered 1990 assessment equalizes to $32,823,700, which is very close to Mr. Stusse's estimate as submitted originally with the appeal. The 1991 Stusse figure is also very close to the Town's equalized assessment. Given this, the board must at least wonder why Mr. Stusse did not resolve the 1991 appeal with the Town or withdraw the appeal.

Second, the board's experience and knowledge of the New Hampshire real estate market, the equalized assessments, taking into consideration the 1990 ordered adjustment, do not appear excessive given the property involved.

Third, the Town demonstrated that it attempted to assess this Property fairly. The Town admitted the Property was unique and attempted to work with the Taxpayer to arrive at a reasonable assessment figure. The Town made a good-faith

effort based on available information to arrive at a just and proportionate assessment. The Town also used the Taxpayer's original costs (1983) and trended them to 1991 as a check on the assessment.

Request for Findings and Rulings

In these responses, "neither granted nor denied" generally means one of the following:

a. the request contained multiple requests for which a consistent response could not be given;

b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. the request contained matters not in evidence or not sufficiently supported to grant or deny; or

d. the request was irrelevant.

1) Granted.

2) Granted.

3) Granted.

4) Granted, total building size approximately 550,000 square feet.

5) Neither granted nor denied.

6) Granted.

7) Granted.

8) Granted.

9) Neither granted nor denied.

10) Granted.

11) Granted.

12) Granted.

13) Neither granted nor denied.

14) Granted.

15) Denied.

Rehearing Motion

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 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

_____
George Twigg, III, Chairman

_____
Paul B. Franklin, Member

_____
Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph Kerrigan, Esq., Attorney for Hi Tension Realty Corp. and Lockheed Sanders, Inc., Taxpayer; David C. Stusse, Agent for Taxpayer; John J. Ratigan, Esq., Counsel for the Town of Hudson; and Chairman, Selectmen of Hudson.

Dated:May 3, 1996

Valerie B. Lanigan, Clerk

0006

Hi Tension Realty Corp.
Lockheed Sanders, Inc.

v.

Town of Hudson

Docket Nos.: 11546-91PT and 14375-93PT

ORDER

This order responds to the "Taxpayer's" motion for reconsideration. The motion fails to establish the board's decision was erroneous in fact or law. See RSA 541:3. Therefore, the motion is denied.

The Taxpayer only filed a rehearing motion in the 1991 and 1993 cases.

If the Taxpayer intended that the rehearing motion include the 1990 docket number, the Taxpayer shall file a motion to amend the rehearing motion, which the board will grant, and this order shall then also cover the 1990 tax year.

The rehearing motion raised four main issues:

1) the board did not find the assessment was correct;

2) the board erred in its review of the Taxpayer's appraisal, especially in deciding what the market area for this "Property" should be;

3) the board apparently used information outside of the record; and

4) the decision itself was insufficient to allow a proper review.

Board Failed to Find the Assessment was Correct

The board is not required to rule that an appealed assessment was correct. The board is also not required to establish a value of the property. See Appeal of Public Service Co. of New Hampshire, 120 N.H. 830, 833 (1980). The board is required, in individual tax appeals, to determine if a taxpayer's property was improperly assessed, resulting in the Taxpayer paying an unfair share of taxes. Such a decision is based on the board's view of the evidence, and this includes reliance on the board's expertise and experience. If the evidence includes sufficient information of a property's value, the decision will usually include the board's conclusion of market value. However, where the evidence is insufficient for the board to state a market value, the board will not do so.

The Taxpayer has the burden to show overassessment. To carry its burden, the Taxpayer should have made a showing of the Property's fair market value.

This value would then have been compared to the Property's assessment and the Town's general assessment level. 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). The Taxpayer has the burden because the Town is required by the constitution, e.g., N.H. CONST. pt. 1, art. 12, and by statutes, e.g., RSA 75:1, to assess all property proportionately based on market information. The law, therefore, presumes that the Town has fulfilled its duty, and thus, the burden of proof is on the Taxpayer to show overassessment.

The Town explained its assessment methodology, including reliance on some of the Taxpayer's own information, and the Town explained its review process, including accepting the Taxpayer's information. Based on this evidence, the board concluded the Town had fulfilled its statutory and constitutional

obligation, arriving at a just and proportional assessment. The board also found the Taxpayer did not present sufficient evidence to show the Town had not fulfilled its obligation of assessing the Property proportionately.

Board's Conclusions Concerning Taxpayer's Appraisal

The Taxpayer asserted a rehearing was required to open the record so the Taxpayer could present new information concerning the Property's value. The Taxpayer's rehearing motion focused on the board's conclusions concerning the Property's probable market area.

The Taxpayer has misread the board's statement concerning market area. On this issue, the board stated the appraiser did insufficient research concerning the Property's market area. The board did not say that New England was the market area. No, the board stated the evidence did not show what the appropriate market area would be for this type of property but that the New

England region would "probably," decision at page 7, be an appropriate market area. This statement was based on the board's experience in hearing numerous cases involving larger and unique properties. The board has been told by many experts that the market area for a unique property is usually larger than the market area for more common properties. For example, a 20,000 square-foot warehouse may have a local market. But a 500,000 research and development building probably has a larger regional market.

The Taxpayer's appraisal, pages 78 and 95, discussed a review of a larger market area, but no documentation was presented to support that statement. For example, the appraisal did not list sales that were considered in other areas but

that were not used for various reasons. While the appraisal discussed a broader market, appraisal pages 78 and 95, the appraisal ultimately only presented New Hampshire sales, appraisal pages 79 and 96.

The Taxpayer's own appraiser, in essence, confirmed that a larger market area should have been used. On page 78, the appraisal stated : "The basic criteria for comparability are character and size of property." This statement demonstrates why the Taxpayer's appraisal was insufficient. First, it was difficult to decide if the comparables' characters were similar to the Property's character. But based on the appraisal's photographs and written descriptions, the comparables did not appear to be similar in character to the Property, which was a campus setting for a large research and development production facility. Moreover, the Property's combined buildings' square footage was approximately 550,000 square feet. Yet the Taxpayer's comparables

were substantially smaller -- comparable one 97,200 square feet; comparable two 182,000 square feet; comparable three 114,765 square feet; and comparable four 187,270 square feet. When the New Hampshire sales were found to be substantially smaller and of dissimilar character, the appraiser should have expanded the market area. After all, the appraisal process should mirror the actions of the market place. Any prospective purchaser for a property such as the appealed Property would not consider the Taxpayer's comparables to be comparable in size and character.

If the board accepts the Taxpayer's assertion that it performed an adequate market search both within and without of New Hampshire and no good comparables could be found, then, in the absence of such sales, the cost approach can be used to estimate value. Appraisal Institute, The Appraisal of Real Estate, 316-17 (10th ed. 1992). The Taxpayer's appraiser did not employ the cost approach.

The Taxpayer also asserted it was not notified in advance about the board's conclusion as to the appropriate market area. Because of this, the Taxpayer asked for an opportunity to perform further research and make another presentation to the board. The board does not find this to be a persuasive reason for a rehearing.

First, an appraisal should provide a supportable market-value opinion based on market information and independent analysis. The appraisal should not be based on what the appraiser thinks the board wants or will decide. If further research was warranted to obtain a proper estimate of market value, that research should have been done as part of the first appraisal. Second, the parties must present their evidence at the hearing itself. TAX 201.37 (e).

New evidence cannot now be presented that could have been admitted at the initial hearing. The board finds the Taxpayer had an adequate opportunity to research the market, and it will not allow a rehearing for additional research at this time.

Extraneous Evidence

The Taxpayer asserted the board must have relied upon extraneous evidence in arriving at its decision. The board did not rely on any specific extraneous evidence. Rather, the board, as a quasi-judicial body, must weigh the evidence and apply its judgement in deciding a tax appeal. See RSA 541-A:33 VI ("The agency's experience, technical competence and specialized knowledge may be utilized in evaluation of the evidence."); Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994).

The board hears numerous cases and acquires a general sense of value and methodology, which can be used as a guide. Based on the board's general knowledge and experience, the board concluded the assessments (as modified by the board) were reasonable, were reasonably calculated and were not shown to be excessive.

Insufficient Decision

The Taxpayer asserted the decision was not clear as to the basis of the board's decision. The board disagrees, stating that the decision itself adequately presented the board's analysis. See Appeal of City of Nashua, 138 N.H. at 265 (decision is sufficient if it contains specific, but not

excessively detailed, basic findings to support conclusion).

The board summarizes here the decision's basis. The Taxpayer failed to show the assessment was excessive. This failure was mainly attributable to the deficiencies with the Taxpayer's appraisal, which lacked sufficient and supportable analysis given the Property's character and size. The appraisal did

not provide the board with any basis for reducing the assessment. The Town adequately supported the assessment. The Property's equalized value did not seem excessive based on the evidence and the board's experience.

The board does, however, correct a typographical error on page 9, paragraph 2 to read: "Second, <u>based on</u> the board's experience, and knowledge of the New Hampshire real estate market, the equalized assessments, taking into consideration the 1990 ordered adjustment do not appear excessive given the Property involved." (correction underlined.)

Conclusion

For the reasons stated above the board denies the Taxpayer's rehearing motion.

Note: originally three board members heard this case. George Twigg III has since retired, and he did not participate in deciding this rehearing motion. Under RSA 71-B:6 I (supp. 1995), a quorum of two is required for tax appeals, and a proper quorum decided this rehearing motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph Kerrigan, Esq., Attorney for Hi Tension Realty Corp. and Lockheed Sanders, Inc., Taxpayer; David C. Stusse, Agent for Taxpayer; John J. Ratigan, Esq., Counsel for the Town of Hudson; and Chairman, Selectmen of Hudson.

Date:

_____
Valerie B. Lanigan, Clerk

0006

Hi Tension Realty Corp., Docket No.: 9305-90PT

&

Lockheed Sanders, Inc., Docket Nos.: 11546-91PT & 14375-93PT

v.

Town of Hudson

ORDER

This order relates to the "Town's" motions to compel the "Taxpayers" to answer certain interrogatories and to produce certain documents. At the hearing, the Town withdrew the production request. We deny the motions in part, and we grant the motions in part. The references below are to the Taxpayers' interrogatories.

Interrogatory 4

The Taxpayers shall provide the Town with a gross estimate of the 1983 total construction costs. Otherwise, the motion is denied because the board questions the relevancy of the information and the burden placed on the Taxpayers.

Interrogatories 6 and 7

The Taxpayers shall provide the Town with a range or representative numbers

for the ascribed economic rents or equivalents that were charged to contractors

or ascribed to the Taxpayers' occupancies for 1989, 1990 and 1991 based on the

Taxpayers' then existing accounting practices. The Taxpayers shall also state who compiled the information and the basis for the calculations. Otherwise the motions are denied.

The Taxpayers shall provide the ordered answers within 20 days of the clerk's date below.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Paul B. Franklin, Member

_____
Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., counsel for the Taxpayers; David C. Stusse, Esq., counsel for the Taxpayers; John J. Ratigan, Esq., counsel for the Town; and, Chairman, Selectmen of Hudson.

Dated: February 2, 1995

_____
Valerie B. Lanigan, Clerk