

**The Hitchcock Clinic**

**v.**

**City of Concord**

**Docket No.: 12728-91-PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$8,044,600 (land \$1,458,700; buildings \$6,585,900) on 30.3 acres of land and buildings at 253 Pleasant Street, a division of The Hitchcock Clinic (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is a special use, special purpose, highly developed property and its fair market value is far less than its cost to construct;
- (2) the cost approach to value in determining the assessment, relied on by the City, is an indicator of value but is not reliable and tends to set the higher limit of value;

- (3) the significant cost of constructing the Property is not its transmissible value;
- (4) the income approach is a valid indicator of value and the income generated from 279 Pleasant Street is comparable to what the subject could expect to generate; and
- (5) the fair market value of the Property is \$4,350,000.

The City argued the assessment was proper because:

- (1) the highest and best use of the Property is as improved with a special use medical clinic building and the only appropriate valuation method is the cost approach;
- (2) the Property is strategically located across the street from the Concord Hospital;
- (3) the Taxpayer's former location at 279 Pleasant Street has been converted into multi-use general office space and it is no longer similar to the subject Property;
- (4) comparable sales support an indicated land value of \$175,000 per acre;
- (5) the fair market value of the Property as of April 1, 1991 is \$8,500,000;
- (6) the Taxpayer had an appraisal performed in October, 1991 which estimated the fair market value of the Property to be \$6,970,000 which, if time adjusted to April, 1991, supports the assessment; and
- (7) based on the purchase price of the land and construction costs of the improvements compared with the Bredice appraisal and the City's valuation by the cost approach, the Property is in fact underassessed.

## Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Property consists of a state-of-the-art, three-story medical clinic with 66,000 square-feet of interior space, situated on a parcel of land approximately 30.3 acres in size located at 253 Pleasant Street, directly across the street from the Concord City Hospital.

The parties stipulated that the cost to build the medical center (completed in 1991) and the cost of land acquisition was at least equal to the assessed value in 1991 and 1992 (\$8,044,600).

The Taxpayer used their 20-year-old facility at 279 Pleasant Street as their only comparable. The testimony of David Doyle, Director of Facility Planning and Development - Hitchcock Clinic, was that several Hitchcock locations in Concord were consolidated in order to accommodate 40 doctors under the same roof at 253 Pleasant Street. Mr. Doyle described the impossibility of finding a single medical tenant to take over their former property at 279 Pleasant Street. As a result, Hitchcock converted the old building into a multi-tenant mix of medical and mostly office-space use. A substantial reduction in market value resulted to the former medical facility based on its predominant change in use.

Owing to the size of the Hitchcock Group (providing 1/3 of all medical care in New Hampshire), the Taxpayer argued that if they were to vacate their new special-purpose premises at 253 Pleasant Street, the same market problem would be created, owing to the fact that the Hitchcock Clinic is the only medical entity in the New England marketplace large enough to occupy the Property and utilize it fully.

Under our construction of the taxing statutes, "[taxable] value is the market value, or the price which the property will bring in a fair market, after reasonable

efforts have been made to find the purchaser who will give the highest price for it." Company v. Gilford, 67 N.H. 514, 517; 35 A. 945, 946-47 (1894) (quoted in Public Service Co. v. New Hampton, 101 N.H. 142, 146; 136 A.2d 591, 595 (1957)).

The functional utility of a special-purpose building depends on whether there is continued demand for the use for which the building was designed. When there is demand, functional utility depends on whether the building conforms to competitive standards.

The desirability and value of a property such as a doctor's office/ clinic building depends on its age and proximity to hospitals and other medical offices.

We find the Hitchcock Clinic, which currently occupies a state-of-the-art, custom-built facility, has no reason to move in the foreseeable future, no similar alternative choices available in the market, and is situated in the so-called 100% location opposite the Concord City Hospital and in a neighborhood populated by smaller, unaffiliated doctor's offices, clinics and assorted specialists who, among other things, create a professional referral pool of practitioners.

Until such time as the Taxpayer relocates from its new facility at 253 Pleasant Street, and in doing so leaves a building which suffers the same or similar economic consequences as their previously vacated facility at 279 Pleasant Street, the board finds any perceived problem with respect to the transmissible value of the Property under appeal to be premature and unsupported, given its present use.

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In New Hampton, we recognized the difficulty of determining the market value of property owned by a public utility, especially when the utility has a legal monopoly on the business for which the property can most profitably be used. Id. We noted,

however, that in such cases a court could view the owner as a hypothetical buyer, id. at 146-47, 136 A.2d at 595, whose idea of a fair purchase price would depend largely on "the price [it] would have to pay for building a new equivalent plant." Id. at 147-48, 136 A.2d at 596. Public Service Company et als v. Town of Seabrook, 126 N.H. 740, 742 (1985).

The board finds that the Taxpayer (Hitchcock Clinic), although not a monopoly and certainly not a utility, is however, the owner/occupant of a special purpose building whose size, configuration and higher-than-average cost per-square-foot could severely limit the number of prospective buyers interested in its acquisition for the purpose for which it was built. As in New Hampton, we take the position that a court could regard the owner as a hypothetical buyer.

This building, built new to the Taxpayer's specifications according to their special needs, should be assessed at its present owner occupied use: a state-of-the-art medical clinic, which suits very well the purpose for which it was built.

Under RSA 75:1 (Supp. 1981), all taxable property shall be appraised, "at its full and true value." See Milford Props. Inc. v. Town of Milford, 119 N.H. 165, 168 (1979); 400 A.2d 41, 43 (1979). Property is to be valued at its "best and highest use." The parties have agreed that the highest and best use of the Property is as a clinic.

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The subject property is neither vacant, nor property which has proven difficult to market because of its characteristics. The Property is actively being used for the purpose for which it was designed and built. The board finds the Property must be valued at its highest and best use, which is as a medical clinic building.

The board finds the Taxpayer should be taxed on the Property's fair market

value and fair market value encompasses "use of the property for the special purpose for which it has been constructed and is being employed." Amoskeag-Lawrence Mills v. State, 101 N.H. 392, 399 (1958); 144 A.2d 221, 226 (1958). When property is appraised, all factors relevant to its value should be considered, Paras v. Portsmouth, 115 N.H. 63, 67-68 (1975), including special architectural features and equipment (with only personalty on the premises excluded from the real estate's real value). The record does not support the Taxpayer's claim that specialized features of the Taxpayer's clinic have no transmissible value. The record indicates that the subject facility was designed and built to the Taxpayer's specifications and is still considered state-of-the-art.

With respect to the Taxpayer's requests for findings of fact and rulings of law, the board finds as follows.

Findings of Fact:

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Denied.
7. Denied.

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Rulings of Law:

1. Granted.
2. Granted.
3. Denied.
4. Denied.
5. Denied.
6. Denied.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) days of

the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Neil F. Castaldo, Esq., Attorney for The Hitchcock Clinic, Taxpayer; and Michael J. Ryan, Director of Real Estate Assessment for the City of Concord.

Dated: December 9, 1994

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Valerie B. Lanigan, Clerk