

Freudenberg-NOK General Partnership

v.

Town of Bristol

Docket Nos.: 12913-92PT, 13959-93PT and 15116-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$8,481,750 and the 1993 and 1994 assessments of \$5,902,000 on a 39.11-acre lot with two industrial buildings (approximately 225,000 square feet) (the Property). In 1992, the Taxpayer also owned, but did not appeal, three other lots in the Town with combined assessments of \$634,050. In 1993 and 1994, the Taxpayer also owned, but did not appeal, two other lots in the Town with combined assessments of \$393,700. For the reasons stated below, the appeals for abatement are denied.

The Taxpayer has the burden of showing the assessments were 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 assessments were excessive because:

(1) a November 1995 appraisal estimated the market values as of April 1992, 1993 and 1994 to be \$2,080,000;

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- (2) the main building's construction (including the partitioning of the interior) is different from the open layout the market is currently looking to;
- (3) the average clear height of 14 feet is undersized by current standards of 20 feet or more; and
- (4) the proper assessments should be: April 1992 - \$3,036,800; and April 1993 and April 1994 - \$2,163,200.

The Town argued the assessments were proper because:

- (1) an appraiser estimated the Property's April 1, 1992 value to be \$5,675,000; and
- (2) the Taxpayer's appraiser made errors in his analysis especially in assuming the Property was primarily a warehouse facility.

Following the hearing, the board viewed the Property with a representative of both parties.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not show overassessment.

If a picture is worth a thousand words, a view is worth several thousand words. Given the great divergence of value opinions here -- Taxpayer approximately \$2.1 million and Town approximately \$5.7 million -- and given the variance in the Property's highest and best use -- Taxpayer industrial and warehouse and Town industrial production and warehouse, the board decided to view the Property to evaluate the evidence. Based on the view and the evidence, the board concludes the Taxpayer's \$2.1 million dollar value estimate was woefully inadequate.

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Arriving at a proper assessment is not a science but is a matter of informed and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). Based on the board's informed judgment, the Taxpayer did not show overassessment. What follows is an explanation of some of the specific problems the board found with the Taxpayer's analysis. These specific concerns are consistent with the board's overall judgment that the Taxpayer's appraiser undervalued the Property.

Preliminarily, the board notes its conclusions concerning approaches to valuing the Property. This Property will most likely be an owner-occupied Property. The income approach, therefore, has little, if any, application. Because sales are indicative of the market, the comparable-sales approach has application. The cost approach has some application despite the age of some portions of the building. The cost approach would give some indication of the additional value attributable to the Property's substantial improvements such as office space, air conditioning, and other improvements and fixtures.

The board did not accept the Taxpayer's analysis for the following reasons.

1) The appraiser's conclusions concerning the type and quality of this Property and his resulting adjustment to the comparables were not supported by the board's judgment and the board's view of the Property. The analysis treated the Property as an industrial-warehouse facility. The Property is actually an industrial-production facility with sufficient warehouse space to support production. As an industrial-

production facility, the Property

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includes substantial building components and fixtures that support production such

as rooms for different processing steps, e.g., research, production, and quality control, and wiring, lighting, plumbing, and ventilation. These features are much more substantial in value than would be found in industrial-warehouse space. Additionally, the Property has more office space (approximately 25%) than most industrial-warehouse properties. This office space was good office space with sufficient improvements to distinguish the space from many warehouse offices.

2) The appraiser treated the Property as average quality, and this conclusion affected the adjustments made to comparables. The board concludes the Property is of good quality. Looking at the comparables' photographs and comparing those photographs to the Property demonstrate the Property was, in many instances, superior in quality and appearance to the comparables.

3) The appraiser did not fully consider that the Property's additional land provides a market enhancement to the Property. Prospective purchasers of industrial properties want a site that is sufficient for present needs and for future needs. The appraiser should have made some adjustment for the Property's extra land in the Town.

4) The Taxpayer's appraiser failed to make adjustments to the bank sales.

5) Finally, while the Town did not come in and directly support the assessment as originally calculated, the Town's analysis supported the adjusted assessment. Moreover, the Town's analysis was consistent with the board's judgment on such important issues as the highest and best use of the

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Property, the quality of the building and the value of the additional land (which the Town's appraiser considered in the land-to-building ratio).

Requests 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.

Town Request for Findings of Fact and Rulings of Law

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Neither granted nor denied.
9. Granted.
10. Neither granted nor denied.
11. Granted.

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12. Neither granted nor denied.
13. Granted.

14. Neither granted nor denied.
15. Granted.
16. Neither granted nor denied.
17. Neither granted nor denied.
18. Neither granted nor denied.
19. Granted.
20. Neither granted nor denied.
21. Granted.
22. Granted.

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark D. Lorusso, Agent for Freudenberg-NOK General Partnership, Taxpayer; John F. Teague, Esquire, counsel for the Town of Bristol; and Chairman, Selectmen of Bristol.

Dated: January 17, 1996

Valerie B. Lanigan, Clerk

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ORDER

This order relates to the "Taxpayer's" rehearing motion, which is denied. The motion fails to establish the board's decision was erroneous in fact or law. See RSA 541:3. The "Town's" objection states many of the reasons the board denies the rehearing motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Mark D. Lorusso, Agent for Freudenberg-NOK General Partnership, Taxpayer; and Chairman, Selectmen of Bristol.

Dated: February 26, 1996

Valerie B. Lanigan, Clerk

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