

Coca-Cola Bottling Company

v.

Town of Londonderry

Docket Nos.: 12914-92PT and 15117-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$7,245,300 (land \$457,500; buildings \$6,787,800) and 1994 assessment of \$10,435,100 (land \$1,824,200; buildings \$8,610,900) on a 58.11-acre lot with an industrial building used for processing and distribution (the Property). The Taxpayer also owns, but did not appeal, a vacant lot in the Town assessed at \$25,400 in 1992 and \$67,700 in 1994. For the reasons stated below, the appeal for abatements is granted.

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 carried its burden.

The Taxpayer argued the assessments were excessive because:
(1) in 1992 the Property had a \$9,000,000 market value, indicating a \$5,940,000 assessment;

(2) in 1994 the Property had a \$8,700,000 market value, indicating a \$8,439,000 assessment;

(3) these value opinions were based on appraisals that were submitted to the board and testified to by the appraiser (The Taxpayer relied on the sales and income approaches.); and

(4) the Town's analysis was flawed.

The Town argued the assessments were proper because:

(1) the building is a high-quality special-use building with a prime industrial site;

(2) the cost approach was the best approach to value;

(3) the building has present expansion capability and approvals;

(4) the Property was worth:

\$12,300,000 in 1992;

\$11,800,000 in 1993; and

\$11,800,000 in 1994;

(An appraisal was submitted, and the appraiser testified.);

(5) these values demonstrated underassessment, and the assessments should have been:

\$8,118,000 in 1992 compared to the \$7,245,300 actual assessment;

\$8,260,000 in 1993 compared to the \$7,245,300 actual assessment; and

\$11,446,000 in 1994 compared to the \$10,435,100 actual assessment; and

(6) the Town disagreed with the Taxpayer's analysis.

The parties stipulated that the department of revenue administration's (DRA) equalization ratios for the two years under appeal indicated the general level of assessment. DRA's equalization ratios were .66 and .97 for tax years 1992 and 1994 respectively.

Board's Rulings

Based on the evidence, the board finds the proper assessments are \$6,402,000 for 1992, \$6,790,000 for 1993 and \$9,409,000 for 1994.

This appeal raises three general questions:

- 1) is the property a special-use or a special-purpose property;
- 2) which of the approaches to value are appropriate in valuing the Property; and
- 3) what is the proper market value for 1992 and 1994.

Special-Purpose Property

The board rules the Property is not a special-purpose property. Following the hearing the parties arranged for the board to view the Property. While the board found there were some physical improvements that were unique to the Taxpayer's use of the Property, such improvements (refrigerated room, tile floors and interior partitioning) were very minimal compared to the general-purpose construction, layout and utility of the building.

The board reviewed various publications on the definition of special-purpose properties. The general concept of special-purpose buildings is that they are uniquely adapted to a single use, and any conversion to other uses would require extensive expense in renovations. Appraisal Institute, The Appraisal of Real Estate 71 (10th Ed. 1991); International Association of Assessing Officials, Property

Appraisal and Assessment Administration 169

Page 4

Coca-Cola Bottling Company v. Town of Londonderry
Docket Nos.: 12914-92PT and 15117-94PT

(1990); Joan Youngman, Legal Issues in Property Valuation and Taxation: Cases and Materials 41 (1994). Further the publications indicate that the uniqueness of design alone is not the criteria for a special-purpose property. Rather, features such as size, number of stories or story height may cause the property to have a very special-purpose or limited market. Property Appraisal and Assessment Administration at 169. Based on the board's view, neither the specialized improvements, the building's size nor the 32 foot clear span height of the building are so unique in the board's estimation to classify the building as a special-purpose building. The Property could be easily converted to other processing warehouse and distribution uses with minimal conversion expense.

Appropriate Approach to Value

There are three approaches to value: 1) the cost approach; 2) the comparable-sales approach; and 3) the income approach. The Appraisal of Real Estate at 71 (10th Ed. 1991);

While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Appraisal and Assessment Administration at 108. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

Given the evidence in this appeal, we find the market approach is the most appropriate approach to value. The board considered the cost and income Page 5
Coca-Cola Bottling Company v. Town of Londonderry
Docket Nos.: 12914-92PT and 15117-94PT

approaches, and while these approaches provided some indication of market value, the board concludes they are not the most appropriate approaches to determine

market value in this case. The board has already determined the Property is not a special-purpose property, which is normally valued by the cost approach. Further, without extensive analysis (and none was presented), the cost approach does not reflect any economic depreciation that could accrue to the Property due to the region's general economic conditions. The board also concludes the income approach is not the singular most appropriate approach. The Property is a large owner-occupied property, the type that is not normally rented. The income approach relies on determining market rents, vacancies and expenses from similar properties. Because similar properties are also owner-occupied, such information is not generally available. While it is possible to extrapolate general rental data for other smaller properties, such information needs to be adjusted because it is not directly comparable.

The board finds the market approach to be the best method to arrive at a value because:

- 1) the Property is not a special-purpose property and thus has a general adaptation to processing/distribution/warehousing uses; and
- 2) there existed market transactions of property that were similar enough to the Property to draw market value conclusions.

This case was a true battle of experts. The Taxpayer's appraiser and the Town's appraiser were both competent, and their reports were generally well-researched and well-prepared. After the Taxpayer's appraiser testified, the board had questions about whether the assessments were proportional. That Page 6
Coca-Cola Bottling Company v. Town of Londonderry
Docket Nos.: 12914-92PT and 15117-94PT

appraiser was credible, and he was generally able to support his position with his research. The Town, however, raised contrary issues about the Taxpayer's appraiser's report that the Taxpayer's appraiser could not adequately answer, e.g.,

the use of bank-related or distress sales and the possibility of some contaminated comparables. Nonetheless, overall, the Taxpayer's appraiser was credible about the conclusion that the assessment was excessive.

The board has reviewed both parties' appraisals and finds the sales presented and relied upon by the Town are generally more comparable and indicative of the Property's market value than those submitted by the Taxpayer's appraiser. The Property is in an excellent location; the building is of excellent quality and design and has further expansion capabilities. The comparables submitted by the Taxpayer generally were significantly inferior in many of these aspects. Additionally, the Town raised issues about some of the Taxpayer's comparables being bank or distress sales and some with contamination.

The board finds the Town's comparables, while also generally inferior in quality and location to the subject, were more similar and required fewer adjustments to arrive at a reasonable indication of value. In reviewing the Town's adjustments made in the sales comparison grids, the board finds two revisions need to be made.

First, based on the testimony and the board's experience, the Town's adjustment for the number of loading docks in most of the sales is not appropriate. The Taxpayer argued that an adjustment for loading docks should be proportional to the number of square footage per loading dock. The board finds neither parties' adjustments are reasonable. All adjustments made by Page 7
Coca-Cola Bottling Company v. Town of Londonderry
Docket Nos.: 12914-92PT and 15117-94PT

appraisers should be reflective of market reaction. The board finds that most of the Town's comparables (with the exception of sales #B2 and B5) and the Property had varying but adequate and reasonable number of loading dock space to be functional.

Such an adjustment for loading docks would be appropriate if there was either a

super-adequacy or an inadequacy in the number of loading docks. The board finds only sales B2 and B5 had an inordinate number of loading docks that need to be adjusted for. Therefore the board has removed the loading dock adjustment from the sales comparison grid except for sales B2 and B5.

Second, the board finds the Town's adjustment for the refrigeration/clean rooms of the subject property relative to the comparables overstated the contributory value of those items. Based on the board's view and the limited description of the Town's comparables, the board concludes the adjustments for those items should be one-half the Town's adjustment.

Revising both the 1992 and 1993/1994 sales comparison grids, the board arrives at an indicated market value for all years of approximately \$9,700,000 (333,422 sq. ft. x \$29/ sq. ft.). The proper assessments are:

1992: $\$9,700,000 \times .66$ equalization ratio = \$6,402,000

1993: $\$9,700,000 \times .70$ equalization ratio = \$6,790,000

1994: $\$9,700,000 \times .97$ equalization ratio = \$9,409,000.

(Although the Taxpayer did not specifically request the board consider the assessment for 1993 (Tax 203.05 (e) (3)), the board has determined the proper 1993 assessment because the evidence submitted by both parties encompassed all three years.)

Page 8
Coca-Cola Bottling Company v. Town of Londonderry
Docket Nos.: 12914-92PT and 15117-94PT

If the taxes have been paid, the amount paid on the value in excess of the above assessments shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town/City undergoes a general reassessment, the Town/City shall use the ordered assessment for subsequent years

with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

In the future, both parties could better assist the board if they would present more evidence on the location of comparable sales or better maps that show the comparables' locations and access to the immediate area and to the region.

One final note, the Taxpayer's appraiser should modify his statement on page 39: "My compensation is in no way contingent upon the value reported." While this statement was accurate in terms of the appraiser's compensation, it did not reveal that the appraiser's employer was handling the 1992 appeal on a contingency. The purpose of the full disclosure, which is required by our rule TAX 201.34(c)(9), is to provide the Town and the board the information needed to judge the appraiser's objectivity.

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 Page 9
Coca-Cola Bottling Company v. Town of Londonderry
Docket Nos.: 12914-92PT and 15117-94PT

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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Date: November 28, 1995

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark D. LoRusso, Agent for Coca-Cola Bottling Company, Taxpayer; and Chairman, Selectmen of Londonderry.

Dated: November 28, 1995

Valerie B. Lanigan, Clerk

0001

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Docket Nos.: 12914-92PT and 15117-94PT

ORDER

This order responds to the Town's December 23, 1995 motion for rehearing (motion) which the board denies.

The motion failed to present any facts or law the board overlooked or misapprehended in its November 28, 1995 decision (decision). Contrary to the Town's assertion in its motion, the board did review and consider the cost approach both relative to the Property as a whole (see pages 4 and 5 of the decision) and in the loading dock and refrigeration/clean room component adjustments made in the market approach.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Page 2
Coca-Cola Bottling Company v. Town of Londonderry
Docket Nos.: 12914-92PT and 15117-94PT

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark D. LoRusso, Agent for Coca-Cola Bottling Company, Taxpayer; and Chairman, Selectmen of Londonderry.

Date: January 10, 1996

Valerie B. Lanigan, Clerk

0006