

McDonald's Corp.

v.

City of Dover

Docket No.: 13242-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1992 assessment of \$535,300 (land \$199,000; buildings \$336,300) on a 43,260 square-foot lot with a restaurant known as McDonald's (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) an appraisal, using neighborhood comparables of similar properties, supports overassessment;
- (2) the building is 22 years old and functionally obsolete; therefore, the highest and best use of the Property is as if vacant; and
- (3) based on the appraisal, the fair market value of the Property as of April 1992 was \$325,000.

The City argued the assessment was proper because:

- (1) the Property's highest and best use is as developed for a fast food restaurant;
- (2) the building is in excellent condition for its age and has been retrofitted to modern standards;
- (3) the main generation of locational value is its traffic count which in the subject's neighborhood is 19,000 per day;
- (4) a study performed to determine sales and leases of comparable properties indicates the subject is underassessed; and
- (5) the Property's fair market value as of April 1992 was \$750,000.

Board's Rulings

Based on the evidence, we find the Taxpayer failed to carry its burden.

Neither party challenged the Department of Revenue Administration's equalization ratio of 97% for the 1992 tax year for the City of Dover. The Property's equalized value is \$551,856 ($\$535,300 \div .97$).

The Taxpayer's former agent and appraiser, Mr. Arthur Bradbury (Bradbury), submitted a report which estimated the value of the Property at \$325,000 based on the cost approach, an income approach and a sales approach (using land sales only).

The board rejects Bradbury's value conclusions entirely for the following reasons.

Bradbury's Costs/Market Approach

Bradbury is contradictory in his report in that first he states the highest and best use of the Property would be "for commercial purposes such as the present use, franchise fast food, or for use as a gas station/mini-mart."

However, in his final reconciliation, he states that the highest and best use of the

subject Property is in essence as vacant and should be valued only for the land. The board finds this conclusion defies logic.

The value of the Property and the business is contained in three components: land, building and franchise or business value. The first two are taxable as real estate; the third is not.

There is no question that the land has considerable value in this case. Both parties agree that the Town's assessment relative to the land component is low. The Property is in an excellent location, and as the Town stated, traffic is the major generator of value.

The building in this case is not totally obsolete so as to contribute no value to the Property. The Property is different than some of the sales used by Bradbury where properties sold with improvements which were razed immediately after purchase. The existing improvements of those sales did not represent the property's highest and best use due to changes in the market. The building on the Property, however, does contribute a significant value to its overall highest and best use. A fast food use cannot occur without a structure in which to prepare and serve food. While this building may be 20+ years old, photographs and testimony indicates that it has been continually renovated to make it functional by today's fast food standards. "The highest and best use must be the most profitable for the entire property - land, buildings and other improvements - because the market deals with the total property unit, and land and buildings usually are not sold separately." International Association of Assessing Officials, Property Appraisal and Assessment Administration, p. 81-82 (1990).

Further, the board does not agree with Bradbury's contention that the building is so unique that any value it has is in essence a franchise value. The board has

seen many distinctive buildings renovated for other uses without a total razing of the improvements. Further, the board believes that in the highest and best use determination of the Property as a fast food restaurant, it is possible to consider that a potential purchaser could be another or a subsequent McDonald's franchise holder. While indeed dealing with different type of property, the court has found in Public Service Co. v. New Hampton, 101 N.H. 142, 147-148 (1957) that, in estimating the value of a unique property, the owner could be considered a hypothetical buyer.

Consequently, in this case we find the building does contribute significantly to the Property's overall value and must be considered in any reasonable value estimate.

Bradbury's Income Approach

Bradbury estimated the Property's value by the income approach at \$325,000. His income approach was predicated upon market rent conclusion of \$11.00 per-square-foot which was drawn from eight office and retail properties in Dover. Further, Bradbury noted that the subject lease was approximately \$10.71 per-square-foot for the base rental rate. While the Property's lease contained a percentage lease provision above the base rent, Bradbury argued that all that value was attributable to the franchise and not to the real estate. Both the City during discovery and the board subsequent to the hearing requested a copy of the franchise and lease agreement and a statement on the amount of percentage rent and how it was calculated. However, the Taxpayer refused to submit those documents to

either the City or the board. Page 5
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Consequently, the board was unable to review and analyze the percentage rent provision and determine if a portion of that could reasonably be allocated to the real estate as opposed to the franchise holder or franchise. We note, however, the base

rental rate for the Property was \$10.71 per-square-foot while the percentage lease amounted to an additional \$37.99 paid in 1992 (based on total annual sales of \$1,925,100 and an 8.5% rate). Consequently, we find Bradbury's assumption of a market rent for a fast food restaurant being identical to that of an office or other retail space is not a reasonable assumption. After extensive demographic and market studies, fast food restaurants locate in some of the most prime locations relative to traffic. We find the location of the Property is ideal and would demand a higher rent for the real estate than those indicated by the Taxpayer's market study of less desirable locations and less intensive uses and that indicated solely by the Property's base rental rate.

Because the Taxpayer's assumptions were so flawed, his conclusion of value was given no weight. Consequently, the City's original presumption of correctness as to the assessment was not overcome, and the board did not need to extensively review the City's market data submitted at the hearing in support of the assessment. However, in short, the board finds the City's data indicates the assessment of the Property is at least not overassessed and possibly underassessed. However, the board concludes in this case that no increase in the assessment is warranted for the year under appeal. The City indicated at the hearing it is in the process of reviewing assessments in this general area and may revise the assessments in accordance with performing its RSA 75:1 and 75:8 responsibilities in assessing all properties

proportionally. Page 6
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Lastly, the board agrees with the City that it would be difficult to dissect the three value components (land, buildings and business) by the income approach. We find however, that the cost/market approach used by the City in its assessment (replacement cost for buildings and vacant or land residual sales for land) inherently

winnows out any business value, and the resulting value reflects only that of the building and the land.

The board responds to the Taxpayer's requests for findings of fact and rulings of law as follows.

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) Neither granted nor denied.
- 3) Granted.
- 4) Granted.
- 5) Neither granted nor denied.
- 6) Denied.
- 7) Granted.

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- 8) Granted.
- 9) Neither granted nor denied.
- 10) Granted.
- 11) Denied.

12) Denied.

13) Denied.

14) Neither granted nor denied.

15) Denied.

16) Denied.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

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 Donald F. Whittum, Esq., Counsel for McDonald's Corp., Taxpayer; and Chairman, Board of Assessors, City of Dover.

Dated: April 24, 1996

Valerie B. Lanigan, Clerk

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