

Lowell Shoe, Inc.

v.

Town of Hudson

Docket Nos.: 11601-91-PT and 14775-93-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 and 1993 assessments of \$4,954,100 (land \$590,100; buildings \$4,364,000) on a 16.80-acre lot with an industrial building (the Property). 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) the 1991 assessment exceeded the April 1, 1991 value of \$3,950,000 as supported by an appraisal by Robert Bramley;
- 2) the appraised value multiplied by the 1.05 equalization ratio would result in a \$4,147,500 1991 assessment;
- 3) the 1991 equalized value was \$4,718,190 (the assessment divided by the equalization ratio);

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4) the 1993 assessment exceeded the April 1, 1993 value of \$3,500,000 as supported by an appraisal by Robert Bramley;

5) the appraised value multiplied by the 1.18 equalization ratio would result in a \$4,130,000 1993 assessment; and

6) the 1993 equalized value was \$4,198,390 (the assessment divided by the equalization ratio).

The 1991 and the 1993 appraisals were based on the market and income approach. Mr. Bramley testified the cost approach was not the correct approach during the years under the appeals.

The Taxpayer also produced a September 1990 Bramley appraisal with a value estimate of \$5,000,000.

The Town argued the assessments were proper because:

1) the assessments were calculated based on a time-adjusted sales analysis, which included three industrial sales in the same industrial park in the Town (Those sales were presented.);

2) the assessments were calculated using the cost approach and then the results were reviewed and adjusted based on actual market data;

3) the assessments were reviewed for this hearing and this review showed a \$30/sf (mean) to \$30.75/sf (median) for these industrial properties, selecting \$30/sf in the assessment calculation;

4) this review also included an upward adjustment (\$345,000 or \$25,000/acre for 13.8 acres) due to the Property's excess land, especially when compared to the sales;

5) the review included an income analysis, using the rental data in Mr. Bramley's report, and the analysis differed from Mr. Bramley's;

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6) the 1991 assessment was consistent with Mr. Bramley's 1990 appraisal;
and

7) the rents within the same industrial park exceeded the rent used by Mr. Bramley.

Note: The Town's analysis report was not admitted because the Town sent the report to the Taxpayer's previous attorney rather than to the Taxpayer's current attorney. The Town was, however, able to discuss the comparables that were also in Mr. Bramley's report.

The Town also questioned the reliability of Mr. Bramley's appraisals, including:

1) Mr. Bramley's use of certain sales that were bank sales or auction sales and his failure to adequately adjust other sales based on the circumstances surrounding the sales;

2) the failure to use the cost approach;

3) the difference between the 1990 and 1991 value opinions when there was only six months before the valuation dates;

4) the use of certain figures used in the income approach, including the rent, vacancy figures (Mr. Blais testified in 1991 the actual vacancy in the industrial park was 3.8%.) and the leasing commission;

5) the failure to add value for the expansion land; and

6) the time adjustments used in the 1991 and 1993 Bramley appraisal.

Board's Rulings

We find the Taxpayer failed to prove the Property's assessment was disproportional, based on the evidence. We also find the Town supported the Property's assessment.

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The following is a summary of the evidence submitted.

1991

Assessment	\$4,954,000
Equalized assessment	\$4,718,190
Taxpayer's April 1991 appraisal	\$3,950,000
Taxpayer's appraisal multiplied by equalization ratio	\$4,147,500
Taxpayer's September 1990 appraisal	\$5,000,000

1993

Assessment	\$4,954,000
Equalized assessment	\$4,198,000
Taxpayer's April 1993 appraisal	\$3,500,000
Taxpayer's appraisal multiplied by equalization ratio	\$4,130,000

The Taxpayer's evidence consisted of the appraiser's testimony and reports. The board finds that evidence unreliable and inconsistent, especially the inconsistencies between the September 1990 report and the April 1991 and 1993 reports, including the following:

- 1) inconsistent testimony concerning the declining market;
- 2) different data in the discounted cash flow analysis, not substantiated by rental information and testimony of appraiser's experience;
- 3) the leasing commission of 15% was reasonable for some period but not on a continual recurring three-year lease cycle; and
- 4) replacement reserve at 5-7% appeared high and this reserve doubled from

the 1990 report to the 1991 report.

In short, the appraiser changed too many assumptions in the six months between September 1990 and April 1, all having a depressing effect on value without adequate substantiation of the change in assumptions. Moreover, three of the four sales relied on by the appraiser had questionable market value aspects affecting the price paid.

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Judgement is the touchstone of valuing properties, and after hearing the evidence and reviewing the written reports, the board concludes that the Taxpayer has not shown overassessment. Additionally, the Town appeared to use an assessment methodology consistently on these commercial properties that itself is evidence of proportionality. Further, the Town argued that reviewing the sales at 13 Flagstone and 2 Wentworth supported the assessment.

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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph M. Kerrigan, Esq., Counsel for Lowell Shoe, Inc., Taxpayer; John J. Ratigan, Esq., Counsel for the Town of Hudson; and the Chairman, Selectmen of Hudson.

Dated: March 22, 1995

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Valerie B. Lanigan, Clerk