

Joseph S. Pappalardo

v.

Town of Plaistow

Docket No. 14867-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$8,500,200 (land, \$3,133,400; buildings, \$5,366,800) on a 14.38 acre lot with shopping center. For the reasons stated below, the appeal for abatement is granted.

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 carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the shopping center consists of approximately 135,500 square feet located in Massachusetts and New Hampshire;
- (2) the New Hampshire part of the center depends on the Massachusetts part in 3 main areas: (a) zoning requirements for parking; (b) snow area;
- (c) Massachusetts connection for municipal water and sewer; and
- (3) based on an income approach to value, the fair market value of the

Property as a whole as of April 1, 1993 was \$7,150,000 of which 5-8% of its value is attributable to the Massachusetts portion.

The Town argued the assessment was proper because:

- (1) the building assessment was derived using Marshall and Swift (1986) cost manual and the \$6.10 square foot land value was arrived at by using the developed percentage of lot coverage;
- (2) assessments of comparable strip malls supported the land and buildings were proportionately assessed; and
- (3) the Taxpayer used actual rents and did not perform a market survey.

Following the hearing the board asked its inspector to perform some analysis on this appeal. His report was provided to both parties for comment.

This report concluded, given the board's instructions concerning the requested analysis, the proper assessment should be \$6,906,900 to \$7,132,100.

The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$7,132,100.

The board concludes the income approach is an appropriate approach here. The board finds the inspector's report, along with the Taxpayer's analysis, to be the best evidence. Those reports speak for themselves.

One issue warrants brief discussion--the rent to be used in the income analysis. The Town asserted we could not use the actual rents because the

Taxpayer did not perform any market analysis to show the actual rents were also market rents. The board agrees that market rents must be the basis of valuation, and the Taxpayer should have provided some market analysis.

However, this does not mean the actual rents cannot represent market rents.

See Demoulas v. Town of Salem, 116 N.H. 775, 781-82 (1976) (there is no per se rule that actual rents cannot be used instead of market rents). We find here the actual rents equate to market rents because: 1) the inspector's analysis only used the new 1992 and 1993 leases, i.e., leases negotiated and executed during the valuation period; 2) the Taxpayer had spent significant money to improve the Property and would attempt to maximize the rents; 3) some of the tenants were national or regional companies who would have known the rental market when negotiating the leases; and 4) the Town did not show the actual rents were not market rents.

If the taxes have been paid, the amount paid on the value in excess of \$7,132,100 plus the assessments on any other Taxpayer property shall be refunded with interest at six percent per annum from date paid to refund date.

RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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
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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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to John M. O'Connor of Marvin F. Poer & Co., Agent for Joseph S. Pappalardo, Taxpayer; and the Chairman, Selectmen of Plaistow.

Dated: January 27, 1995

Valerie B. Lanigan, Clerk

Joseph S. Pappalardo

v.

Town of Plaistow

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ORDER

This order responds to the "Town's" rehearing motion, which is denied for failing to state any "good reason" to find that the board erred as a matter of fact or law. See RSA 541:6.

In this appeal, the "Taxpayer" argued the "Property" was assessed at a higher percentage of fair market value than the percentage at which other properties were generally assessed in the Town. In such cases, the taxpayer is required to provide evidence concerning the property's market value and, if the department of revenue administration's equalization ratio is disputed, a ratio that reflects the general level of assessment in the community. E.g., Appeal of City of Nashua, 138 N.H. 261, 263 (1994); Appeal of Net Realty Holding Trust, 128 N.H. 795, 796 (1986). In this case, neither party disputed the department of revenue's 1.05 equalization ratio, and thus, the focus was on the Property's market value.

While taxpayers have the burden on appeals, it should not be forgotten that municipalities must equitably assess properties, and these assessments

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must be based on market value. N.H. Const. pt. 1, art. 12; RSA 75:1; Brock v. Farmington, 98 N.H. 275, 277 (1953).

This board is empowered to hear property tax appeals to ensure that taxpayers are proportionately taxed, and the board is authorized to "institute its own investigation, or hold hearings, or take such other action as it shall deem necessary." See also, Appeal of Sokolow, 137 N.H. 642 (1993) (in certain circumstances, the board is not only authorized but required to use its investigative powers).

While the burden of proof is on the taxpayer, and remains there throughout the appeal, the burden of persuasion can shift during the hearing from a taxpayer to a town. In other words, there are appeals where the taxpayer presents sufficient information to question the proportionality of an assessment, and it is then up to the town to present sufficient information to support the assessment. In this case, the Town did not present sufficient information to support the assessment after the Taxpayer made a sufficient showing of overassessment. This has been a problem with this Town in other cases. Because the board is required to decide the case, based on the information presented to it, and any additional information obtained from its investigation, it is essential that the Town be prepared to support its assessments.

In determining a property's market value, there are three basic approaches to value:

1) the cost approach;

- 2) the comparative-sales approach; and
- 3) the income approach.

Appraisal Institute, The Appraisal of Real Estate, 71 (10th Ed. 1991); International Association of Assessing Officers, Property Assessment Valuation, 38 (1977). While there are three approaches to value, not all three approaches are of equal importance in every situation. The Appraisal of Real Estate at 72; Property Assessment Valuation at 38. 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 evidence 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).

Based on the evidence and information provided to the board, the board concluded the income approach was the best method to value this property. The main reason for this conclusion was the recent renovations and leasing up of several units in the Property. Market information concerning a property is usually the best available evidence of a property's value because the market has already taken into consideration the several factors that influence value.

See Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988) (arms-length market sale is one of the best indicators of a property's value). Neither party submitted comparable sales. The Town, however, did rely upon a cost approach, but they did not present evidence concerning how that cost approach correlated to market value. Thus, the board was left with the income

approach, and we concluded that using the actual rents, from leases entered into near the

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assessment date, was a proper basis for the income approach. (See discussion page 2-3 in decision.)

The Town was incorrect when it argued the Taxpayer cannot carry its burden based on the income approach because the Town did not use the income approach in valuing other properties in the Town. While it is true that using the same methodology can be evidence of proportionality, see Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982), a taxpayer is not prohibited from presenting a value opinion based on a different method. Moreover, the board is not prohibited from relying upon a different value method than the Town had used. What is important is not the method used to arrive at the value, but that the selected method most accurately reflected the property's value. In this case, we found the best value indicator to be the Taxpayer's income approach as modified by the board.

If the Town thought the assessment was proportional, it should have presented additional evidence to support the assessment rather than resting on the Taxpayer's burden. Additionally, if the Town thought the Taxpayer's valuation was incorrect, the Town should have presented information as to why the Taxpayer's methodology was incorrect and why the board's modification of that analysis was incorrect.

Based on the above, the board denies the rehearing motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to John M. O'Connor of Marvin F. Poer & Co., Agent for Joseph S. Pappalardo, Taxpayer; and Sumner F. Kalman, Esq., counsel for the Chairman, Selectmen of Plaistow.

Dated: March 29, 1995

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Valerie B. Lanigan, Clerk