

C.R. Bard

v.

Town of Fitzwilliam

Docket No.: 15619-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$2,772,000 for two parcels (Lot 24 - land \$15,600 and Lot 29 - land \$95,750; buildings \$2,660,650) on 18.90 acres of land with a manufacturing facility (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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) there are locational issues that affect transportation and shipping due to

distances from major traffic arteries;

(2) the market value based on the lease-purchase-price option should be \$1,800,000; and

(3) the Taxpayer submitted two memoranda supporting, through the use of some general data, the lease-purchase-price option as the market value.

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The Town argued the assessment was proper because:

(1) the lease-purchase-price option does not reflect market value;

(2) the current assessment is within the range of value proffered by the Taxpayer's agent;

(3) the location has been addressed by the 10% economic depreciation adjustment;

(4) the Taxpayer has not carried the burden of proof; and

(5) the assessment analysis done by the Town's consultant is property and region specific whereas the memoranda presented by the Taxpayer is general and non-specific.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not prove the Property was overassessed. This is a straight-forward burden of proof case. The Taxpayer has the burden to establish disproportionality. To establish disproportionality, a taxpayer is required to demonstrate that the appealed property's equalized value exceeded the appealed property's market value. See Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H 253, 254-55 (1994). To demonstrate this, a taxpayer should present credible and supportable evidence of the appealed property's market value.

See RSA 75:1 (assessments must be based on market value). The Taxpayer failed to accomplish this, and therefore, there is no basis to grant an abatement.

The board finds the Taxpayer's evidence to be insufficient for the following reasons.

1) The board has no confidence in the Taxpayer's research or report. The report consisted of a piecemeal compilation of various information, some original and some obviously just copied from other sources. This leads the board to conclude that the Taxpayer's report was not an independent valuation report that was specific to the Property. While the Taxpayer may have done

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independent and sufficient analysis to arrive at a supportable value conclusion, the report certainly did not support this, and the testimony did not either.

2) The Taxpayer's market approach did not include any adjustment for such factors as lot size, building size, quality and type, and property location. Instead, the Taxpayer presented a straight recitation of various factors without any specific adjustments to correlate the comparables to the Property. In addition to failing to provide any property-specific comparison and adjustments, the Taxpayer made no time adjustments to reflect changing market conditions over the three-year period of the comparable sales. Ultimately, the Taxpayer selected the median price per square foot rather than making adjustments based on market information and appraisal judgement.

The board has concerns about whether the Taxpayer's broad-brush approach accurately reflected the Property's unique attributes such as the 24% office

space and the 25% clean room space.

3) Concerning the Taxpayer's income approach, the Taxpayer similarly failed to present available information showing how the comparable rents related to the rents collectible from the Property. Again, the chosen rent was based on a broad-brush approach rather than a property-specific approach.

To the extent the \$3.00 per-square-foot rent corresponded to the Holos' lease, the Taxpayer did not present sufficient information to support that \$3.00 figure as a market rent. The Town raised several legitimate questions about whether the lease, and its terms, were market driven or driven by the Taxpayer's specific economic circumstances. In addition to not providing sufficient market analysis for the rent, the Taxpayer did not provide sufficient market analysis for the expenses or vacancy that were used in the income analysis.

4) Concerning the \$1,800,000 option price, the Town raised sufficient issues about that price. Specifically, the Town questioned the Taxpayer's motivation. The board was provided with excerpts from the lease, and even

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these excerpts can be interpreted as showing the Taxpayer's desire to sell the building quickly to Holos. That lease contained rent escalations and option price escalations, making it more favorable to purchase the Property early on in the lease term.

5) Towards the end of the hearing, the Taxpayer raised questions about the Property's condition. While these asserted defects could have an impact on value, the Taxpayer did not produce sufficient analysis to show that the equalized assessment had not already considered the impact of these asserted

problems.

Overall, the board has no confidence in the Taxpayer's presentation. As the Town aptly stated, given the nature, size and uniqueness of this Property, one would have expected substantially more research, analysis and presentation. Without these, it is impossible to have confidence in anyone's value conclusions.

The board denies the Town's request for costs. We understand the Town's frustration in that the Taxpayer's case apparently became more specific for the hearing, but the board does not consider this to be sufficiently egregious to warrant an awarding of costs.

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

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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

Concurred, unavailable for signature
Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gregory A. Heyn, Representative for the Taxpayer; and Chairman, Board of Selectmen for the Town of Fitzwilliam.

Date: August 14, 1997

Valerie B. Lanigan, Clerk

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