

NH Industries, Inc.

v.

City of Lebanon

Docket No.: 16820-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1996 assessment of \$1,182,800 (land \$224,500; buildings \$958,300) on a 5.19-acre lot with a factory (the Property). The Taxpayer also owns, but did not appeal, a vacant lot in the City with a \$70,200 assessment. 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) a June 21, 1995 appraisal (Headley appraisal) estimated the Property's

market value to be \$1,020,000;

(2) the Property sold in September 1995, for \$1,100,000;

(3) the \$1,100,000 price for real estate was an allocation of a transfer which included real estate, equipment and business value; and

(4) the appraisal should be given significant weight because it is unbiased

and relied on recent sales.

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The City argued the assessment was proper because:

(1) the Taxpayer's appraisal included general economic observations that were more appropriate for southern and central New Hampshire than the Lebanon market;

(2) the appraiser did not make adjustments to the sales for certain financing considerations, differences in quality of construction or condition of the buildings;

(3) the appraiser's income approach used a higher vacancy rate than the market indicates for industrial properties in the Lebanon area; and

(4) if the income approach calculation is adjusted solely for the vacancy factor, the indicated market value is significantly higher and close to the City's equalized assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to carry its burden based on either the sale price of the Property or the Headley appraisal.

The Taxpayer testified the Property sold for \$1,100,000 in 1995. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329

(1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). The board was unable to place significant weight on the indicated sales price because it is an allocation from a larger consideration which included equipment and business value. The Taxpayer's representative, Mr. Snow, did not know the gross amount of the transaction, the details of the sale or how the allocated value was calculated other than the Headley appraisal had some bearing on it."¹

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For the board to be able to place significant weight on such an allocated value, further evidence needed to be submitted to show the reasonableness of that allocation. Further, the allocated sales price is within 13% of the City's equalized assessment ($\$1,182,800 \div .94$ (1996 equalization ratio)). Without more definitive evidence as to the allocation calculation, the difference is not of such a magnitude to alone carry the Taxpayer's burden.

Similarly, while the board does not totally discount the Headley appraisal, enough discrepancies and questions exist in the sales and income approaches that it is not conclusive evidence of market value. First, the preparer of the appraisal, Mr. Headley, was not available for questioning at the hearing despite being listed as a witness in the Taxpayer's Prehearing Statement. Further, Mr. Snow did not know the details of the comparable

¹ The Taxpayer's Prehearing Statement identified a Mr. Robert Chartier, President of N.H. Industries who would be present as a witness to testify on the history of the sale; however, Mr. Chartier was not present at the hearing.

sales, their financing and several of their subsequent transfers.

The City pointed out differences between the comparable sales and the Property such as inferior construction, condition or utility of the comparables that could be a basis for adjustments not made in the Headley appraisal. For example, the City testified that comparable sale #1 was built on a sloping site where the building was tiered or stepped down over three levels. This configuration on a tight lot impacted the ease in which delivery trucks could access the rear of the building and limited the types of tenants to those whose functions could be accommodated on the several levels of floor space.

Mr. Snow also did not know more about the financing details of the comparable sales than that summarized in the Headley appraisal. The summary showed most of the transactions were cash sales or partial owner financing. Such financing can affect the consideration paid in certain markets. Without further research to determine whether that was indeed the case here, the lack of adjustments for financing raises an unanswered question and reduces the weight the board can give the appraisal.

The City presented testimony and evidence that the rent and vacancy rate

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in the Headley appraisal were lower than market. Slight adjustments in either one or both would have enough of an impact on the indicated market value to change the final value conclusion.

In short, enough questions were raised relative to certain assumptions made between the Headley appraisal to account for the difference in the appraisal's value conclusion and the City's equalized market value.

Consequently, the board finds the Taxpayer's evidence was not adequate to carry its burden.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Christopher Snow, Agent for N.H. Industries, Inc.; and Chairman, Board of Assessors, City of Lebanon.

Date: January 7, 1999

Valerie B. Lanigan, Clerk

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