

Split Ballbearing

v.

City of Lebanon

Docket No.: 16822-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1996 assessment of \$7,043,900 on a 26.70-acre lot with an industrial facility (the Property). 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 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 carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the City incorrectly listed the thickness of the building's floor;
- (2) based on an appraisal, the market value of the Property was \$4,700,000 on April 1, 1996; and

(3) there is groundwater contamination on the site that requires on-going remediation; remediation costs should be deducted from the appraised value.

The City argued the assessment was proper because:

(1) the Property is in a good location, and the existing highly trained workforce adds value;

(2) the Property has expansion potential;

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(3) the Taxpayer provided an appraisal during the informal hearing process with a \$3,350,000 value;

(4) the Taxpayer stated 6.7 acres are unusable due to wetlands but further stated the area could be used for parking, which makes it usable;

(5) most of the clean-up work was done before April 1, 1996, and the City removed the value of the remediation improvements as required by RSA 72:12-a;

(6) the Lebanon market for this type of property has remained stable (if not increasing) while other properties suffered foreclosures; vacancy has been less than 5% while other areas had vacancy rates of 20%;

(7) the cost approach is the best method because the Property is owner-occupied; and

(8) the Taxpayer's appraisal was flawed; the adjustments were high; some sales were not arm's-length transactions; the rents in the income approach were not indicative of market rents.

On January 19, 1999, the board viewed the Property with representatives from the City and the Taxpayer.

Board's Rulings

Based on the evidence, the board makes the following market findings and

orders the following assessments.

| Tax Year | Market Value | Ratio | Assessment |
|----------|--------------|-------|-------------|
| 1996 | \$5,080,860 | .94 | \$4,776,000 |
| 1997 | \$5,524,100 | .93 | \$5,137,400 |

As stated above, the Taxpayer has the burden to show the Property was overassessed. To carry this burden, a taxpayer normally must demonstrate that the appealed property's equalized assessed value exceeded the property's market value. In the instant case, the Property had a \$7,500,000 equalized value, and the Taxpayer argued the Property had a \$4,700,000 value in 1996 and a \$4,850,000 value in 1997. These values, however, were for a clean property.

The Taxpayer presented evidence about contamination on the Property, which

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will be discussed later in this decision. While the board did not agree completely with the Taxpayer's appraisal and while the City raised some questions about the Taxpayer's value estimate, the board found the appraisal demonstrated that the Property was overassessed. Therefore, the board spent considerable time reviewing the appraisal in light of the board's concerns and the City's criticisms.

Initially, the board notes that the highest and best use of this Property is its present use as a single-occupant, light-manufacturing facility.

There are three approaches to value: 1) the cost approach; 2) the comparable-sales approach; and 3) the income approach. The Appraisal of Real Estate at 71 (10th Ed. 1991). While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of

Real Estate at 72; Property Appraisal and Assessment Administration at 108.

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 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 in this appeal, the board finds the comparable sales approach to be the best approach to value. The board chooses the comparable sales approach because the Taxpayer submitted a sufficient number of comparables properties that could be relied upon in making an estimate of the Property's value. As explained above, in order to determine overassessment, the board must review the Property's market value. Actual sales provide a reliable source of information, especially when there are good comparables. Additionally, the board finds the cost approach and the income approach to be less persuasive given the number of assumptions that are required and given the lack of good comparables for some of those factors.

Specifically, in the cost approach, the Taxpayer did not provide good

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comparable land sales. Furthermore, the Property has been added to approximately 10 times, and therefore, the building has sections that were built from 1958 to 1993. Given the various additions, it is difficult to estimate a physical depreciation, and it is difficult to estimate whether any functional depreciation is required given the manner in which the Property has been added onto over the years. Concerning the income approach, the board concludes this Property would be a single-occupant building that would most likely be an owner-occupied building. Therefore, it is difficult to rely on

rental properties as comparables.

Turning now to the Taxpayer's sales approach, the board finds the Property should be valued at \$30.00 per square foot. The unadjusted square-foot values ranged from \$24.59 to \$30.97, and the adjusted ranged from \$22.48 to \$30.89. The Taxpayer used a \$25.00 per square-foot value, but the board finds that value to be inadequate. The City raised a legitimate question about the Property's heating and cooling system. While this will be discussed in more detail later, the board concludes the heating and cooling system placed the Property in the upper range. The same can be said for the Property's location. The board also had some concerns about whether the Taxpayer's appraiser had adequately justified the number of adjustments made and the percentage of those adjustments. The board concludes the appraiser should have been more specific in breaking out adjustments.

The 1996 value is based on \$30.00 a square foot ($\$30.00/\text{sf} \times 188,180 = \$5,645,400$). This figure represents the value as clean. Because the board will be making a further adjustment (discussed below) for contamination, and this adjustment differs from 1996 to 1997, the board calculated the 1997 market value by time adjusting the 1996 value by 3% ($\$5,645,400 \times 1.03 = \$5,814,800$).

Concerning the air conditioning, the board's \$30.00 per-square-foot figure reflects the added value of the air conditioning. The City submitted Municipality Exhibit A, which was a page from the Marshall Valuation Service.

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The City asked the board to use a heating and cooling adjustment determined by adding the difference between the base heating value and the hot and chilled

water value. In the submitted exhibit, the difference would have been: \$16.70 for hot and chilled water - \$1.95 for space heaters = \$14.75/sf; less 24% depreciation = \$11.21/sf. This \$11.21/sf x 188,180 sf would add \$2,109,500 to the Property's value. The board finds this to be excessive. Moreover, some of the comparable sales had air conditioning such as B-1, which the Taxpayer stated had 100% air conditioning, but the City stated it had only 50% air conditioning. Nonetheless, the square-foot value on B-1 did not reflect a substantial change as argued by the City. The board also considered the Taxpayer's testimony that the entire Property was air conditioned as a result of the Taxpayer taking over a new line of production. This line required air conditioning. Even though that new production only occupied a portion of the building, the Taxpayer decided, for employee-relations purposes, to air condition the entire building. Therefore, considering all the factors, the board agrees that the air conditioning is an issue that warrants consideration. The board admits it is difficult to determine the air conditioning's transferrable value, but as explained above, the board selected the higher end of the square-foot values to account for the air conditioning.

We turn now to the issue of contamination. The board spent considerable time during deliberations trying to arrive at the correct solution to this issue. It is clear from the Taxpayer's evidence that the Property has contamination that has already cost the Taxpayer substantial money and will continue to cost the Taxpayer in the future. Specifically, there are three wells within the improvements on the Property that pump oil out of the ground, which is then burned in the furnace. Additionally, there are wells behind the plant that pump water out, and this water then goes through filtration. The evidence shows that this remediation could continue for another ten to twenty years. The Taxpayer presented information that between April 1, 1996, and

March 31, 1997, the Taxpayer spent hundreds of thousands of dollars on

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remediation.¹ Further, the Taxpayer submitted a post-hearing letter that indicated ongoing remediation would cost approximately \$110,000 per year for the next ten to twenty years.

Despite the clear evidence of contamination and of the substantial cost of remediation, the Taxpayer's presentation of what adjustment was appropriate was very weak. The Taxpayer asked for an outright deduction of the expenditures from 1996 to 1997. Following the hearing, the Taxpayer asked for a \$1,037,700 deduction. Unfortunately, the Taxpayer did not present any appraisal testimony on this issue and did not present any articles or cases that would assist the board in determining what adjustment was warranted. Nonetheless, because assessments must consider all factors, the board is compelled to make an adjustment for contamination. Given the capital expenditures from 1996 to 1997 and the anticipated on-going expenses, the board adjusted the market value by 10% for 1996 and 5% for 1997. The 1997 adjustment is lower because remediation expenses decreased in 1997.

| Tax Year | Market Value As Clean | Contamination Adjustment | Market Value |
|-----------------|----------------------------------|-------------------------------------|---------------------|
|-----------------|----------------------------------|-------------------------------------|---------------------|

¹ The Taxpayer's evidence was not clear on the exact amount spent in tax year 1996 (April 1, 1996, to March 31, 1997). The Taxpayer's representative, Mr. Snow, stated the amount was \$656,000. ("Based on [Taxpayer Exhibit 2] my best estimate of the costs of clean up for the period April 1st 1996 through April 1st 1997 is \$656,000." Hearing tape at 566.) But the Taxpayer's December 16, 1998 letter to the board stated \$791,443 was spent April 1, 1996, to December 31, 1996. The Taxpayer submitted, (Taxpayer Exhibit 2) a list of all remediation costs that were billed between 1994 to 1998. That exhibit did not, however, itemize when the work was performed. The evidence supports a finding of several hundred thousand of dollars without stating a precise number.

| | | | |
|------|-------------|------------|-------------|
| 1996 | \$5,645,400 | .90 (-10%) | \$5,080,860 |
| 1997 | \$5,814,800 | .95 (-5%) | \$5,524,100 |

In closing, the board notes the City's basic approach was to refute the Taxpayer's arguments rather than to support the assessment itself. Given the strength of the Taxpayer's appraisal, the City could not completely refute the appraisal. The City explained its revaluation method, but it did not present specific analysis to support the assessment. The City admitted that in

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calculating the Property's value it used sales of smaller industrial lots to arrive at the Property's assessment. Additionally, the City did not hire an independent fee appraiser to value the Property. Given the size of the Property and the strength of the Taxpayer's presentation, more is required of the City.

If the taxes have been paid, the amount paid on the values in excess of \$4,776,000 for the tax year 1996 and \$5,137,100 for the tax year 1997, 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, unless the City has undergone a general reassessment, the City shall also refund any overpayment for 1998. Until the City undergoes a general reassessment, the City shall use the ordered 1997 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 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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Christopher Snow, Agent for Split Ballbearing, Taxpayer; and Chairman, Board of Assessors, City of Lebanon.

Date: February 9, 1999

Valerie B. Lanigan, Clerk

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ORDER

This order denies the "Taxpayer's" "Motion for Clarification."

The Taxpayer's representative, Mr. Snow, has no basis for the motion. In his motion, he failed to include the following key facts that warrant denial.

1) The hearing notice allocated one hour for the hearing. Under TAX 201.27(c) (d), the board may state and then enforce time limits. Parties may, under TAX 201.27 (c), request additional time. Mr. Snow did not file such a request. Nonetheless, the hearing lasted over five hours.

2) The Taxpayer's direct presentation took over two hours with approximately an hour and one-half of cross-examination.

3) The board informed the parties that the hearing would have to end at 4:30 p.m., but the board also stated it would reconvene the next day if requested by the parties. During the hearing, when the board reminded the parties of the 4:30 p.m. deadline, Mr. Snow complained, as he does now, about

the time constraints on his cross-examination of the City. Following Mr. Snow's remarks at the hearing, the board offered Mr. Snow the chance to come back the next day, but he declined the offer.

Based on the above factors, the board finds the motion lacks any merit.

In the future, Mr. Snow should file the appropriate prehearing motions for additional time and then better manage the time allocated. Moreover, if Mr.

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Snow is offered additional time, he should accept it rather than filing a post-hearing motion that incorrectly asserts the board did not allow him sufficient time.

The motion is denied and the submitted material shall not be reviewed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Christopher Snow, Agent for Split Ballbearing, Taxpayer; and Chairman, Board of Assessors, City of Lebanon.

Date: January 29, 1999

Valerie B. Lanigan, Clerk

