

Kevin Johnson and Richard S. Malagodi

v.

City of Nashua

Docket No.: 17195-96PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1996 assessment of \$511,800 (land \$202,600; buildings \$309,200) on a 2.50-acre lot with a warehouse (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) there is limited access due to minimal frontage and a busy intersection only 100 feet from the driveway;

(2) the Property is a nonconforming use in a residential zone which limits the expansion and potential use of the Property;

(3) the Property has minimal office space;

(4) the Property was purchased by current owners in 1995 for \$395,000 in arm's-length transaction; had the buyers been able to obtain bank financing,

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they would have been able to purchase the property for around \$375,000

(previous owner financed 90% of the sale price at 10% interest); and

(5) the Property's value on April 1, 1996, was \$396,769 based on comparable sales and \$384,434 based on the income approach; and

(6) the assessment should be \$391,000 based on the sale of the Property and the City's 1996 equalization ratio of 99%.

The City argued the assessment was proper because:

(1) an appraisal estimated a \$510,000 value as of April 1, 1996, based on comparable sales and \$530,000 based on the income approach; and

(2) the Property was purchased with favorable financing terms which, if accounted for, indicates the sale price was substantially under market.

#### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$420,700 based on a market value finding of \$425,000 and the City's 1996 equalization ratio of .99.

The board was provided with four indications of value: 1) the assessed value of the Property at \$511,800; 2) the sale of the Property in June 1995, for \$395,000; 3) the Taxpayers' consultant's report concluding an assessment of \$391,000 based on the sales comparison approach and income approach; and 4)

the City's restricted appraisal which estimated a market value of the Property of \$510,000.

The board gives some weight to the sale of the Property in 1995 for \$395,000 as an indication of market value. The Property was marketed for a reasonable time by one of the major brokers in the Nashua area. Also, the Taxpayers testified that other properties they looked at during their search for suitable warehousing space were priced around \$20.00 per square foot. However, the board does not find the sales price to be conclusive evidence of the Property's market value due to the seller holding the mortgage for 90% of the sale price. Based largely on the Taxpayers' testimony, the board finds on balance the financing arrangements were advantageous to the Taxpayers because

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only a 10% down payment was necessary while 15% - 20% more would have been required through conventional financing. However, the board also finds there was a partially offsetting disadvantage to the seller by committing to a long-term payment of the Property as opposed to receiving a one-time cash payment.

However, possibly mitigating is the potential income tax advantages to the seller with this type of financial arrangement. On balance the board finds the sales price was slightly below market, although with the varying motivations it is difficult to quantify. The board gives no weight to the City's estimate of the value of the financing terms (Municipality Exhibit C) because several of the assumptions are flawed. First, the City assumed that because the percentage of the down payment was lower than the market norm, the total consideration price was proportionately lower. While the board finds the sales price is slightly lower than market, increasing it proportionally to

the amount of the down payment is without basis. Further, in valuing the financial gain of the lower down payment, the City compounds the amount of the down payment saved to a future value and subtracts that from the current savings to arrive at a net equity gain. The board finds this calculation is flawed because future value is subtracted from a current value.

Having concluded that the sale should be given significant weight but at the same time recognizing that the sales price may be lower than market due to the financing terms, the board now turns to both parties' market analyses to determine if indeed the sale was lower than market. Both parties submitted a sales comparison approach and an income approach. The board has consistently found that 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),

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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). In this case, the board finds the sales approach to be the most appropriate approach primarily because the Property is an owner-occupied type of property as opposed to one purchased for investment purposes for leasing. Consequently, after considering and reviewing the parties' income approaches, we place no weight on them.

Turning to the parties' comparable sales approaches, the board has focused its review on the two comparable sales used in common by the parties.

The board has generally placed little or no weight on the parties' other comparable sales for several reasons:

1) the Taxpayers' sale at 94 Elm Street is not comparable because it contains only 5,700 square feet of warehouse/office space, - less than one-third the size of the Property;

2) the Taxpayers' sale at 32 Mason Street is also significantly smaller and of a service garage construction and utility;

3) sufficient sales exist in Nashua so the Taxpayers' Londonderry sales are discounted; also the City raised questions in two of those sales as to whether the sale to a tenant affected the sales price; and

4) the City's 6 State Street sale is in a superior location which required over a 25% adjustment by the City for that factor alone; also the sale contained nearly 13% office area compared to the 1% office area of the Property.

After review of the 15 Progress Street and 43 Simon Street sales and revisions to the parties' adjustments, the board concludes a market value of approximately \$21.00 per square foot.

The board's adjustments are detailed as following. The board determines an adjustment for the building size is necessary; however, the board concludes the City's size adjustment extracted from two sales with under 3,000 square feet in size difference when applied to larger differences of square footages

results in an adjustment of too large a magnitude. The board's adjustments

are guided by the difference in the cost of various size buildings contained in Marshall Valuation Service's replacement cost manual. The board finds some adjustments for location are necessary but not of the magnitude argued by the Taxpayers. The lot's zoning expansion limitations, configuration and narrow frontage and access do make the Property less desirable than similar industrial/warehousing properties with expansion capability and with more direct access onto a public way. However, the board finds no evidence was submitted to document the 20% to 30% adjustments by the Taxpayers. The board compared the land portion of the sales' assessment-record cards to attempt to determine an appropriate adjustment, however, such comparison was not meaningful given the differences in the size of the properties. Based on the board's judgement and the Taxpayers' testimony<sup>1</sup>, we conclude a 10% adjustment for these factors is warranted. The board finds the 10% adjustment for condition of the building as contained in the Taxpayers' analysis is warranted. A review of the depreciated price per square foot of the comparables versus the subject Property contained on the assessment-record cards indicates that some adjustment for condition/quality is warranted. No adjustment was needed for office space as both sales had minimal office area similar to the Property.

In conclusion, this analysis of the two Nashua sales indicates the sale price was slightly below market and supports a market value conclusion of \$425,000.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$420,700 shall be refunded with interest at six percent

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<sup>1</sup> "Given all the imponderables in the valuation process, [j]udgement is the touchstone." Public Service Company v. Town of Ashland, 117 N.H. 635, 639 (1977).

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 1997 and 1998.

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Until the City undergoes a general reassessment, the City 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 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

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David Irwin, Agent for Kevin Johnson and Richard S. Malagodi, Taxpayers; James M. McNamee, Esq., Counsel for the City of Nashua; and Chairman, Board of Assessors, City of Nashua.

Date: January 27, 1999

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Valerie B. Lanigan, Clerk

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