

Evans Technology Park

v.

Town of Londonderry

Docket No.: 17229-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$1,057,900 (land \$200,700; buildings \$857,200) on Lot 27, a 2.71-acre lot with an office building (4 Technology Drive) (the "Property"). The Taxpayer also owns, but did not appeal, five other properties in the Town with a combined, \$1,712,800 assessment. 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 Properties' assessments were 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 land value is disproportionately high;
- (2) the building value has not been appropriately reduced for physical and functional depreciation;
- (3) the heating system (electric HVAC) affects the rental rate that can be achieved; comparable properties were all gas fueled which leads to lower operating expenses;
- (4) there is inadequate parking for the building's size; and
- (5) the April 1996 market value was \$910,000.

The Town argued the assessment was proper because:

- (1) the Property is primarily an office building with some warehouse space;
- (2) comparable sales show the market will pay a premium for properties with a higher percentage of office space and are supportive of the assessed value; and
- (3) a value estimate by the income approach indicates the current assessment is accurate.

Board's Rulings

Based on the evidence, the board finds the correct assessment to be \$984,600 based on a market value finding of \$1,015,100. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land

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value and building value. The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.

Both parties mentioned the cost approach and the sales comparison approach as methods of valuing the Property. However, both parties spent the majority of their time discussing the income approach to value the Property. The board agrees that the best approach for this Property is the income approach although the board did consider the parties' testimony concerning the other two approaches. 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). Given the evidence in this appeal, we find the income approach is the most appropriate approach to value. A review of both parties' methodology in the income approach reveals that the two primary areas of disagreement are the appropriate market rent per square foot to be applied to the Property and the appropriate vacancy and credit loss factor. The board will focus its review on the two areas of disagreement. The parties agreed on the level of expenses on a percentage basis as well as an appropriate capitalization rate.

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The Town used a \$5.25 per square foot market rent while the Taxpayer used \$5.00 per square foot. The board finds the most appropriate rent for this Property is the Taxpayer's \$5.00 per square foot. This is based on the building having a significant amount of deferred maintenance and the presence of the electric HVAC units and the negative effect these would have on the rental rate in the market. Buildings similar to the Property that were newly

constructed or more modern would probably have other fuel sources such as natural gas or oil rather than electricity.

The second area of disagreement was in the vacancy rate. The Town used a 5% vacancy rate and the Taxpayer used a 15% vacancy rate. The board finds the more appropriate rate is the Town's rate of 5%. The lower market rental rate of \$5.00 per square foot would be necessary to keep the vacancy rate at a more economically feasible level. The board agrees that if the rental rate is too high, vacancy rates will also be high. However, the board finds that under prudent management the lower rental rate offered by the Taxpayer would keep the vacancy at a level consistent with those of the properties offered by the Town in their discussion of vacancy rates. In the Property's general area the vacancy rates, as testified to by the Town and not rebutted by the Taxpayers, were very low for similar properties. However, the board does find that the unique features of the Property, especially the electric HVAC, would keep the rental rate low in order to keep the building occupied at an appropriate level. The board also agrees with the Town's statement that the Taxpayer did not supply sufficient backup evidence to support the 15% vacancy rate. The Taxpayer is reminded that it has the burden of proof in the appeal process.

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The following is a revised income approach analysis for the Property using the Town's vacancy rate and the Taxpayer's market rental rate. The expense percentages and the overall capitalization rate are the same as those used by both parties.

REVISED INCOME APPROACH

INCOME

| | |
|------------------------|--------|
| Potential Gross Income | |
| Building Size | 26,062 |
| Market Rent (psf/yr) | \$5.00 |

| | | | |
|-------------------------------|------|---------|--------------------------|
| | | | \$130,310 |
| Vacancy Rate 5% | | | \$(6,516) |
| Effective Gross Income | | | \$123,794 |
| EXPENSES | | | |
| Leasing | 1.8% | \$2,228 | |
| Management | 3.0% | \$3,714 | |
| Replacement Rsvs | 5.0% | \$6,190 | |
| TOTAL | | | \$(12,132) |
| Net Operating Income | | | \$111,662 |
| OVERALL CAP RATE | 0.11 | | |
| INDICATED MARKET VALUE | | | \$1,015,100 (Rounded) |

INDICATED ASSESSED VALUE \$1,015,100 x .97 = \$984,600 (Rounded)

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$984,600 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 Town has undergone a general reassessment, the Town shall also refund any overpayment for 1997 and

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1998. 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 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to James T. Mulroy, Agent for Evans Technology Park, Taxpayer; and Karen G. Marchant, Assessor for the Town of Londonderry.

Date: April 6, 1999

Lynn M. Wheeler, Clerk

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Evans Technology Park

v.

Town of Londonderry

Docket No.: 17229-96PT

and

Londonderry Technology LLC

v.

Town of Londonderry

Docket No.: 17521-97PT

ORDER

This order responds to the Londonderry Technology LLC, docket no. 17521-97PT (LTL) motion to continue and consolidate, Mr. John G. Cronin's request for appearance in Evans Technology Park, docket no. 17229-96PT (ETP) and the Town's objection to the LTL motion to continue and consolidate. On January 25, 1999, the board held a telephone conference with Mr. James T. Mulroy, tax consultant for ETP, Mr. John G. Cronin, attorney for LTL and Ms. Karen Marchant, assessor for the Town of Londonderry.

The board denies LTL's motion to continue and consolidate. The hearing for ETP, docket 17229-96PT scheduled for February 2, 1999 at 9:00 a.m. will proceed as scheduled. Because Mr. Mulroy failed to timely file a prehearing statement, ETP will be limited at the hearing to those arguments contained in its appeal document. Further, the board does not accept Mr. Cronin's appearance on behalf of ETP because Mr. Mulroy has not withdrawn his appearance in accordance with TAX 201.11. Lastly, the board will in due course schedule a hearing of the LTL appeal (docket no. 17521-97PT).

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Docket Nos.: 17229-96PT and 17521-97PT

SO ORDERED.

BOARD OF TAX AND LAND APPEAL

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to James T. Mulroy, representative for Evans Technology Park; John G. Cronin, Esq., counsel for Londonderry Technology LTL; and Karen Marchant, Assessor for the Town of Londonderry.

Date: January 27, 1999

Valerie B. Lanigan, Clerk

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