

Osram Sylvania Products Inc.

v.

Town of Hillsboro

Docket No.: 17672-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$9,148,800 (land \$461,000; buildings \$8,687,800) on Map 11K/Lot 167, a 262,891 +/- square foot industrial facility consisting of 8 attached buildings situated on 17.40 +/- acres (the "Property"). The Taxpayer also owns, but did not appeal, Map 110/Lot 171 - a two-story dwelling on a 3.38-acre lot assessed at \$105,200 (land \$69,200; buildings \$36,000). 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) the Property's Hillsboro location, on the fringes of the greater Manchester market, detracts from its marketability;
- (2) there is a limited labor pool in Hillsboro which further detracts from the Property's value;
- (3) the highest and best use of the Property is as a single-tenant, industrial manufacturing facility;
- (4) the comparable sales approach is the best approach to value the Property with the income approach as support; comparable sales and leases support a market value of \$5,257,200 for an indicated assessment of \$5,730,300 ($\$5,257,200 \times 1.09 = \$5,730,300$, rounded); and
- (5) the Town's comparables are not indicative of the Property's value because, among other reasons, they are substantially smaller than the subject and in superior locations and the Town failed to appropriately adjust the comparables for those factors.

The Town argued the assessment was proper because:

- (1) the Property is a good quality, R&D/manufacturing facility which is well utilized at or near capacity;
- (2) the Property's highest and best use is as utilized;
- (3) an income approach and sales comparison approach to value were analyzed with the most reliable approach being the income approach because its estimate of value is based on the most reliable data; and
- (4) the Town's analysis using the income approach supports the assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. The assessment on a specific property must be proportional to the general level of assessment in the community. In this municipality, the 1997 level of assessment was 1.09 as determined by the department of revenue administration. This means assessments generally were higher than market value. The Property's equalized assessment was \$8,394,400 ($\$9,148,800 \div 1.09 = \$8,394,400$, rounded). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than \$8,394,400 on April 1, 1997. Such a showing would indicate the Property was assessed higher than the general level of assessment in the municipality.

The board agrees with both parties that given the age of some of the components of the improvements, the cost approach would yield an estimate of value based in part on subjective estimates of accrued physical depreciation for the various components of the improvements. The conclusion of value by this approach would be very speculative given the significant portion of the total assessment attributable to the improvements.

The Taxpayer testified the sales comparison approach was the best approach to value for this Property and employed the income approach as a secondary or support approach. The board finds the Taxpayer's sales comparison approach to be deficient in several areas. First, the

confirmation of the comparable sales was done by speaking only to listing brokers or assessors rather than any party directly involved in the sale such as the grantor, grantee or selling broker. Before appropriate adjustments may be made, the correct selling price must be determined. It is inadequate to rely on stamps applied by the registry of deeds or comments supplied by persons not directly involved in the transaction to authenticate the credibility of the transaction as to its arm's-length nature. The Taxpayer did not confirm the sales appropriately or to the extent necessary. Second, the board finds that of the six sales employed by the Taxpayer's representative, three of the sales contained no office space. Comparing these sales to the Property with its 15% to 20% office area requires some discussion and adjustment. The Taxpayer did neither. Of the remaining comparable sales, one had only 6% office space leaving only two sales with significant office space somewhat comparable to the Property. Further, of the two sales that had relatively comparable office area, one sale had a selling price of only \$4.68 per square foot. Comparing this unit value to that of the five other comparable sales shows a significant disparity that the Taxpayer's representative did not address. The Taxpayer states in Taxpayer Exhibit #1 "the comparables that we have presented that we consider most similar to the subject are 5 Vose Farm Road in Peterborough and 48 Elm Street in Laconia because of location with regard to the I-93, size and utility." These two sales, according to the Taxpayer, sold for \$4.68 per square foot and \$18.06 per square foot respectively. However, in the Taxpayer's reconciliation and final estimate of a unit value via the sales comparison approach, a \$20.00 per square foot unit value is selected. In the Taxpayer's opinion, the two most comparable sales are at 5 Vose Farm Road and 48 Elm Street, yet he selects a final unit value

outside the range of those two comparable sales and higher than five of the six comparables sales unit values. The methodology employed by the Taxpayer in making this determination is unfathomable absent some further explanation. The Taxpayer did not provide a sales comparison grid where an analysis and comparison between the Property and the comparable sales is outlined. This is a standard tool of appraising used to estimate the value of the Property by the sales comparison approach. A grid such as that would enable the Taxpayer's representative to make adjustments such as location, office area, building size, lot size, age/condition of building, and utilities available based on market data to reflect differing factors between the comparable sales and the Property. This would also allow the reader of the report and the board to understand more fully the Taxpayer's thinking and methodology. It is insufficient to carry the Taxpayer's burden to base the appeal on the sales comparison approach and then provide nothing more than one or two paragraphs as in the Taxpayer's prehearing statement or the three paragraphs in the Taxpayer's Exhibit #1 presented at the hearing without any supporting data or rationale for either the factors chosen for adjustment or the size of any of the adjustments. While the Taxpayer's representative performed a brief income approach to value, it was only for support of the sales comparison approach and was not relied upon as an independent, stand-alone estimate of value. The Taxpayer's representative testified the income approach was supportive but not the best indicator of value for the Property.

In Taxpayer's Exhibit #1, on page 2, under the income approach, the Taxpayer's representative states that "[f]or the purpose of this discussion we will focus on the leases at 5 Vose Farm Road, 11 Ricker Avenue and 1 Wall Street. These three leases develop a rental rate

range of \$1.87 to \$2.50 per square foot. It is our opinion that the subject's market rental rate would fall outside of this range, after accounting for the time period in question between the comparables commencement dates and lien date of April 1, 1997." For the Taxpayer to supply four leases and select three as the most comparable and then state the lease rate for the subject would fall outside of this range causes the board to have little confidence that these leases are truly comparable and that the income approach has been thoroughly examined and correctly applied. The Taxpayer's representative had not seen the leases, had no knowledge of what they included such as escalation clauses and had not inspected any of the leased properties. Two of the Taxpayer's leases were to tenants-at-will and one was a sublease. A further review under the income approach heading of Taxpayer's Exhibit #1 indicates that some of the lease rates chosen by the Taxpayer for the various portions of the Property were actually derived from a combination of the Taxpayer's leases and the Town's leases. However, without any discussion or analysis to indicate how the final individual lease rates were chosen, the board finds them of little probative value in the instant case.

Similarly, using sales and listings of properties to estimate a capitalization rate without accurate income and expense information is inappropriate. In Taxpayer Exhibit #1, the Taxpayer uses the sale of 5 Vose Farm Road and then the listing of the same property to indicate different capitalization rates. However, on the page titled "Summary of Lease Comparables" in the same document the Taxpayer states the lease rate of \$4.25 per square foot while on the page entitled "Derivation of Market Capitalization Rates" the lease rate for the same property is stated at \$4.75

per square foot. This conflicting information shows the Taxpayer's representative's lack of thorough knowledge of the comparable leases.

The Taxpayer's representative testified that he was a licensed real estate appraiser and had done appraisal work in other states. However, he stated that he was not appearing in that capacity in this case. He was only involved as a tax representative/consultant for the Taxpayer. Given the nature of the Property, the magnitude of the assessment, and the background of the Taxpayer's representative, the cursory review and analysis performed by the representative is inadequate to carry the Taxpayer's burden of proof. The Taxpayer's representative could have obtained an appraisal.

In its prehearing statement in attachment #1, the Taxpayer states the Property is listed by the New Hampshire Department of Environmental Services as having a history of hazardous waste contamination and is classified as a hazardous waste site. However, the Taxpayer's representative did not address any influence on value that this circumstance might impose on the Property. The board finds some discussion of this situation, and its impact on the Property's value would have been necessary for the board to be able to consider that factor's influence on the Property's value.

The Taxpayer is reminded of its burden to show the assessment was disproportionate or illegal. The board cannot conclude the Property is overassessed because the Taxpayer did not present sufficient evidence to support overassessment.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Paul A. Krupinsky, Representative for Osram Sylvania Products Inc., Taxpayer; and Chairman, Board of Selectmen of Hillsboro.

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Date: January 14, 2000

Lynn M. Wheeler, Clerk

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