

**Saturn Realty, LLC**

**v.**

**City of Portsmouth**

**Docket No.: 17814-98PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the 1998 assessment by the City of \$1,535,400 (land \$760,600; buildings \$774,800) on a 3.59-acre lot containing a 12,980 square-foot building used as an automobile dealership (the "Property"). For the reasons stated below, the appeal for abatement is partially granted, but only to the extent of the correction in acreage accepted by the City; this correction reduces the land value slightly (by \$6,600) and has been incorporated on the revised assessment card prepared and submitted approximately one month after the January 30, 2001 hearing in this case. The corrected assessment is \$1,528,800 (land \$754,000; buildings \$774,800).

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); and Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the City. Id.

In meeting its burden, the Taxpayer is required to comply with the board's rules and procedural requirements discussed below, including those pertaining to the prehearing conference and the timely submission of evidence.

The Taxpayer argued the assessment was excessive because:

- (1) a limited summary appraisal prepared for an adverse party in a divorce proceeding (the "Cullen Appraisal") is 'good evidence' that the fair market value of the Property was no more than \$1,425,000 as of April 1, 1998 (\$1.5 million estimate of value as of February 24, 1999, time adjusted by 0.5% per month);
- (2) applying the City's 0.82 equalization ratio for 1998 to this estimate yields an indicated assessed value no higher than \$1,168,500;
- (3) the City's comparables overestimate the market value because they include auto dealerships in Nashua; and
- (4) the best comparable is the Portsmouth Ford dealership that sold in 1998 and is physically close to the Property; application of this comparable results in an assessed value of \$1,134,387.

The City argued the assessment was proper because:

- (1) it used a combination of the market and cost approaches to conclude the market value of the Property as of April 1, 1998 was between \$1.85 to \$1.9 million, which supports the assessed value when the 0.82 equalization ratio is applied; and
- (2) the Portsmouth Ford property is one of a number of available comparables used by the City but should not be applied to the exclusion of all others, since it is distinguishable in size, age,

access and other aspects.

The City made adjustments in February of this year to the acreage and land value, promptly after receiving more information from the Taxpayer regarding a conveyance of a small portion of unused land to a neighboring owner.

### **Board's Rulings**

The board rules the Taxpayer failed to meet its burden of proving the City's corrected assessment of \$1,528,800 (land \$754,000; buildings \$774,800) is improper and must be set aside. In order to prevail on this appeal, the Taxpayer was required to make a stronger evidentiary showing and to comply more fully with its pretrial obligations.

At the prehearing/settlement conference held on May 16, 2000, the Taxpayer's representative (Christopher Snow) appeared and submitted the Cullen Appraisal in an effort to challenge the City's assessment. The Cullen Appraisal had been prepared by an adverse party (the wife of the Taxpayer's principal, Mr. Stephen P. Lannan, Jr.) in a previous divorce proceeding and estimated a substantially lower market value (\$1.5 million). The City objected to use of the Cullen Appraisal because it was prepared for another party. A board member conducting the conference noted various inconsistencies and errors in this document. Mr. Snow, on behalf of the Taxpayer, chose to obtain permission to use the Cullen Appraisal as written, rather than commissioning a new or revised appraisal to correct the noted deficiencies. Mr. Snow later withdrew from his representation of the Taxpayer and was eventually replaced by Attorney Loughlin, who filed an appearance just five days before the January 30, 2001 hearing. Mr. Lannan, an owner having no appraisal experience, was the only person who testified on the Taxpayer's behalf.

At the January 30, 2001 hearing, the board, based upon the City's objections, excluded certain documents the Taxpayer sought to introduce without complying with the board's pretrial procedures and rules governing the exchange of documents. See, e.g., TAX 201.20 and 201.33 - 35 and the board's Order dated March 10, 2000. The Order had expressly limited the parties to the arguments, witnesses, exhibits, appraisals, and opinions of market value contained in the prehearing statements filed with the board. (The Taxpayer's prehearing statement failed to list Mr. Lannan as a witness and was never amended.)

Because of rulings excluding certain documents, the board kept the record open for a limited time to permit the Taxpayer's attorney to modify and submit the "Memorandum" he had prepared for the January 30<sup>th</sup> hearing for the purpose of deleting all references to the excluded documents and all arguments relying upon them. While the Memorandum is lengthy (over 40 pages, including exhibits) and repeats arguments made at the hearing for a substantially lower assessment, it fails to help the Taxpayer satisfy its burden of proof in light of other evidence supporting the City's corrected assessment.

The Property is in a prime location directly across from a large regional shopping center, adjacent to higher valued hotel and other properties and convenient to an exit off the Spaulding Turnpike (with access from both directions). The City estimated a traffic count on Spaulding Turnpike of over 45,000 vehicles per day, an estimate undisputed by the Taxpayer. The City also took into account comparable sales of other auto dealerships, including the sale of Portsmouth Ford in July, 1998 on which the Taxpayer places great emphasis, but concluded the Property had a much better location ("V[ery] good" compared to "Average") in its analysis.

The Taxpayer failed to present sufficient evidence to discredit these points, except to

argue several comparables were from the Nashua rather than the Seacoast area and “visibility” from the Spaulding Turnpike was not “high.” The board finds these distinctions less than persuasive: while Nashua may have a larger population, auto dealerships face more competition and no clear evidence of higher land values was submitted; and other aspects of the Property’s location, noted above, might well make up for less than optimal “visibility” from the highway.

The Taxpayer emphasized only one auto dealership (Portsmouth Ford) as a sales comparable, but the board finds this dealership is distinguishable in size (much larger) and age (much older) and has direct access from only one side of the Spaulding Turnpike rather than the dual access features of the Property (from the Gosling Road exit). The board also notes that since neither party utilized the income approach to valuation in this case, differences in average car sales between the two dealerships is not a very relevant consideration.

Even if Portsmouth Ford was exactly comparable, which it is not, the board found no evidentiary basis to conclude that property had not been underassessed, rather than the Property being overassessed, which is the conclusion the Taxpayer sought to establish. The underassessment of other properties does not prove the overassessment of the Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to one or more similar properties. Id. The Taxpayer acknowledged the City was presently undergoing a revaluation; this revaluation may well result in higher assessments for other properties, including Portsmouth Ford, because of appreciation in market values.

In summary, the board finds the Taxpayer failed to meet its burden of proof in this case. The Taxpayer is, of course, entitled to a partial abatement based on the acreage adjustment and

corrected land value made by the City. If the taxes have been paid, the amount paid on the value in excess of \$1,528,800 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 1999 and 2000. 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, as set forth in 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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Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Peter J. Loughlin, Esq., Counsel for Saturn Realty, LLC, Taxpayer; and Chairman, Board of Assessors of Portsmouth.

Date: April 19, 2001

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Lynn M. Wheeler, Clerk