State of New Hampshire

Board of Tax and Land Appeals

State Office Park South
107 Pleasant Street
Concord, New Hampshire
03301-3834

603-271-2578

MHT Hangar 5, Inc.

v.

Town of Londonderry

Docket No.: 18256-99PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the1999 tax assessment by the "Town" of $211,300 (buildings $209,100; yard items $2,200) on a prefabricated aircraft hangar building and related improvements (the "Property"), situated on leased land at the Manchester Airport. For the reasons stated below, the appeal for abatement is granted .

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); 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 municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the land lease with the City of Manchester has an 18 year fixed term (which commenced upon completion of the aircraft hangar building), with no options to renew and no other rights to extend the lease or purchase the land;

(2) the Property is used for storage of five private airplanes by the Taxpayers' shareholders and the market rent for such space is no more than $350 per month per plane;

(3) use of the income approach in 1997 by the Taxpayer's former representative resulted in a value estimate of approximately $89,000, similar to the estimate using the cost approach, and these approaches to valuation are preferable to the comparable sales approach the Town employed in this case; and

(4) while Manchester Airport has grown in size, any locational advantages for private aviation are offset by security, congestion and other factors, and an assumption by the Town that private airplane hangar space has more market value in Manchester than in Nashua or other area airports is not valid.

The Town argued the assessment was proper because:

(1) the comparable sales approach is the best indicator of the value of the Property;

(2) no comparables exist at the Manchester Airport, but six comparable sales of hangars from Nashua Airport should be used to determine market value, if adjusted with a 20% positive locational factor for Manchester;

(3) this approach results in an indicated value range of $208,185 to $351,350 and the Property's equalized value for 1999 ($211,300 ÷ .90 equalization ratio ≈ $234,800) is well within this range; and

(4) the Taxpayer failed to satisfy its burden of proving disproportionality.

Board's Rulings

Based on the evidence, the board finds the Taxpayer sustained its burden of proof and should be granted an abatement to an assessed value of $102,700 for the 1999 tax year. The board's reasoning is set forth below.

Property Characteristics

The Property is somewhat unique, both in terms of its function (as a private aircraft hangar) and because it has a finite remaining period of use (12 years) by the Taxpayer. The board has carefully reviewed the written lease agreement dated August 24, 1992 submitted by the Taxpayer (Exhibit 1, the "Lease"). The lessor, the City of Manchester (the "City" -- "through its Department of Aviation"), required the Taxpayer to erect, at its own expense, a pre-fabricated aircraft hangar, subject to plans and specifications approved by the City, "to be ready for use and occupancy not later than November 30, 1992." The term of this lease is 18 years from the time of completion of the hangar, with no options to renew or extend the lease or to purchase the land. At the end of the term, the Property must be conveyed to the City, free and clear of all liens. See Taxpayer Exhibit 1, Articles I, III, IV, VI and VIII. In short, the real estate rights to be valued in this case (cf. RSA 21:21) are significantly affected by the limited term and other characteristics of the Lease.

Choice of Approaches

In general, there are three accepted valuation approaches: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach; but not all are of equal importance or use in every situation. See Appraisal Institute, The Appraisal of Real Estate 71 - 72 (10th ed. 1992); and International Association of Assessing Officers, Property Appraisal and Assessment Administration 108 (1990). 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); the tribunal deciding the valuation issue is authorized to select any one of these approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

In 1997, when confronted with a prior increase in the assessment, the Taxpayer hired a representative, David Irwin, to prepare a valuation study and meet with the Town. Mr. Irwin's study applied the income and cost approaches to estimate a value range of $89,280 to $89,335. The valuation study and meeting resulted in an agreement by the Town to lower the assessment to $100,800 for the 1997 tax year.

In 1999, the Town increased the assessed value to $211,300, resulting in this appeal. The Town's Assessor decided to use the sales comparison approach as the basis for this assessment. Because there were no "recent sales of hangars that are similar" in the Town, the Town utilized six comparable sales, "all from the City of Nashua Municipal Airport," and added a "locational adjustment of 20%" to the indicated prices per square foot of these sales. See the Town Assessor's August 1, 2001 letter to the board.

In this case, the board finds the use of the comparable sales approach by the Town questionable (and far less preferable than the income and cost approaches) for several reasons.[1] First, the Town Assessor did not review any of the leases on the Nashua properties she submitted as comparisons and therefore could not state whether they were truly comparable with respect to basic terms, such as lengths of lease, lease rates, rights to renew or extend and so forth. Second, she did not inspect the comparable hangars to determine if they were similar in style (e.g., storage, maintenance and "T-hangars" are three recognized types with different features and costs) or quality of construction, height, and other features. Third, other testimony at the hearing indicated Manchester did not have any locational advantages over Nashua and other area airports for private airplanes when additional factors (such as congestion and security) are taken into account.

Income Approach

Given the characteristics of the Property, and the constraint of a fixed term lease which will expire in approximately 12 years, a prudent third party investor is likely to value the Property based upon the stream of rental income less expenses likely to be generated over the remaining term, capitalized by an appropriate discount rate. In using an income approach to valuation, assumptions regarding the time horizon of the investment (the remaining lease term, for example) and other factors, including the discount rate,are required.

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[1] In her letter addressed to the board, supra, the Town Assessor stated she used the comparable sales from Nashua, with a 20% positive adjustment, to estimate "a value range of $208,185 to $351, 350" for the Property. The wide breadth of this range belies the usefulness of this approach in this case.

To simplify the calculations made below, the board assumed the 18-year lease term commenced on April 1, 1993, the assessment date, rather than November 30, 1992 (the latest date indicated in Section 3.2(c) of the Lease), leaving a remaining period of 12 years of use as of the assessment date. The value of the Property, unlike other leases with longer terms or leases subject to options to extend or renew, must therefore be determined based upon the estimated income and expenses (benefits and costs) accruing over this finite period. There is no evidence the Town took this significant time constraint into account in making the 1999 assessment.

Use of the income approach yields a significantly lower market value than the sales comparison approach attempted by the Town. In Attachment A, the board has utilized yield capitalization, in the form of a discounted cash flow analysis,[2] to determine the present value of the Taxpayer's possessory interest in the Property. The board modified, however, several of the assumptions previously made by the Taxpayer's prior tax representative, Mr. Irwin, in his 1997 valuation study. (Taxpayer Exhibit 2.)

With regard to the discount rate, for example, the board noted a substantial drop in interest rates in the intervening period, with the prime rate falling from 9.0 % on April 1, 1997 to 7.75% on April 1, 1999.[3] Mr. Irwin also used an earlier, higher effective tax rate than would be

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[2] See, generally, Joseph M. Davis and John A. Swain, "Possessory Interests: A Systematic Valuation Approach" Journal of Property Tax Management (Winter 2000) at p. 4 -5 ("yield capitalization or discounted cash flow . . . is most appropriate for separately valuing the possessory interest [of the lessee]. Yield capitalization converts future net operating income into a present value by discounting each year's future income . . . at an appropriate yield rate."

[3] The source for this information is the Federal Reserve Bank of St. Louis, "Monthly Interest Rate Data," http://www.stls.frb.org/fred/data/rates.html.

warranted in 1999, when the effective tax rate for the Town was 2.326%.[4] Weighing these factors, the board concluded an overall discount rate of approximately 12.3 % (10 % plus effective tax rate) was more reasonable and used this estimated rate in its discounted cash flow computation.

Aside from the discount rate, the board made several other adjustments in its analysis using the income approach. The vacancy and collection loss rate of 10 percent used by Mr. Irwin was reduced to two percent because of testimony at the hearing regarding the lack of available hangar space for private aircraft at Manchester Airport and the use of the space on the Property for planes owned by the Taxpayer's shareholders, which should diminish re-rental and collection problems. Mr. Irwin used information from the Taxpayer's income tax returns and other information to estimate operating expenses at 23.4% of effective gross income; the board, however, believed a more conservative assumption of 20% was appropriate here.

Regarding market rents, the Taxpayer's representatives (shareholders Richard Letemore and Robert Coerver) testified they knew of no rental higher than $350 per month per space and this testimony was not challenged by the Town. The board used this rental rate in its analysis, but applied an inflation factor of three percent per annum to both the rental income and the operating expenses.

In addition, the board assumed a zero salvage value at the end of the lease term because of certain key provisions in the Lease. These provisions indicate the Taxpayer must maintain the

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[4] The department of revenue administration reported a full value tax rate of $23.26 per $1,000 of assessed value in 1999, an effective tax rate of 2.326% for the Town . Mr. Irwin, in contrast, used a 3.662 % rate in his 1997 analysis. (See Taxpayer Exhibit 2).

condition of the Property, "reasonable wear and tear excepted," and return it to the lessor at the end of the lease term. See Taxpayer Exhibit, Lease Sections 6.2, 6.10(c) and 8.1.

Finally, as noted above, the board made the simplifying assumption that lease commencement occurred on the tax assessment date of April 1, 1993, rather than an earlier date on or before December 1, 1992, in order to simplify the computations and avoid partial-year calculations.[5] The outcome of the board's analysis, using the discounted cash flow method in Attachment A, is an indicated value as of April 1, 1999 of slightly over $114,000, which, when equalized, indicates an assessed value of approximately $102,700.

Reasonableness Check

The board undertook a check on the reasonableness of this value indication using the income approach by also considering the cost approach. As noted above, Mr. Irwin used the cost approach in 1997 to make a replacement cost estimate using Marshall & Swift rating factors. The board utilized the same source, but the updated 1999 edition, to derive a somewhat higher replacement cost per square foot estimate ($14.23 rather than $13.15), applied the Town's square foot estimate of 7,862 (slightly higher than Mr. Irwin's estimate of 7,644 square feet) and added a paving assessed value of $2,200. Use of these estimates and the cost approach results in an

[5] In contrast, Mr. Irwin's methodology used direct capitalization (an assumption of a perpetual term) and did not take the termination date of the Lease into account.

assessed value indication of $102,900 -- within $200 of the estimate (reflected in Addendum A) using the income approach.[6]

In summary, the wide disparity in value estimates between the income and cost approaches, on the one hand, and the comparable sales approach employed by the Town, on the other, indicates the Town's sales are not truly comparable to the Property. While the income and cost approaches yield estimates that are closer together, the board finds the income approach is preferable in this case, especially since its primary focus is to value the Property at its highest and best use, in accord with fundamental appraisal principles.[7] For all of these reasons, the Taxpayer's appeal is granted and the board orders the Town to abate the assessed value for the 1999 tax year to $102,700.

Other Issues

If the taxes have been paid, the amount paid on the value in excess of $102,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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[6] This cost approach estimate does not reflect any physical, functional or economic depreciation. The Taxpayers presented no evidence of physical or functional depreciation that would impair the Taxpayer's use of the Property. In theory, economic depreciation could be present, given the characteristics of the Lease noted above, and may lower the value estimate if a cost approach is used. The income approach, however, through its focus on "market" rent, can take non-observable depreciation into account, but results in a higher estimate of value here, indicating economic depreciation may not actually be warranted.

[7] See, generally, International Association of Assessing Officers, Property Appraisal and Assessment Administration, supra at 90 ("Highest and best use analysis determines what use will generate the highest present value to the property at the time of the appraisal."); and International Association of Assessing Officers, Mass Appraisal of Real Property 17 - 20 (1999) ("Not every approach is pertinent or useful for valuing all properties. . . . In general, the appraiser should use or give greatest weight to the approach that is most supportable given the available data.")

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 overpayments made in subsequent years. The Town shall use the ordered assessment for subsequent years, until such time as there is a good faith decision to reappraise the Property under RSA 75:8 due to changes in value or until there is a general reassessment in the Town. See RSA 76:17-c, I. In this regard, the Town is not precluded from deciding whether continued use of the income approach or, alternatively, another approach or combination of approaches, could result in a more accurate valuation of the Property in future years at its highest and best use, but any change in the valuation methodology must meet the "good faith" standard set forth in the statute.

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; and 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

Paul B. Franklin, Chairman

Albert F. Shamash

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: MHT Hangar 5, Inc., Taxpayer; and Karen Marchant, assessor, Town of Londonderry.

Date: September 25, 2001

Lisa M. Moquin

Lisa M. Moquin, Clerk

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ADDENDUM A

Income Approach to Valuation

Data and Assumptions:

		Notes and Clarifications
Economic Rent	$350	per month
Number of Hangars	5	
Vacancy & cred. loss rate	2%	
Operating Expense Ratio	20.00%	
Discount Rate	12.326%	(10% plus effective tax rate)
Inflation factor applied to future years	3%	per annum
Lease term commencement assumption	04/01/93	(to avoid partial-year calculations, this date rather than a date) on or before November 30, 1992 was used.)
Original term of lease	18	years
Remaining term of lease, as of 04/01/99	12	years
Net salvage value at end of lease term	$0	

Cash Flow Estimates

							Subtotals
Year	1	2	3	4	5	6	
Tax year:	1999	2000	2001	2002	2003	2004	
Potential Gross Income	$21,000.00	$21,630.00	$22,278.90	$22,947.27	$23,635.69	$24,344.76	
Less: Vac. & Collection	$420.00	$432.60	$445.58	$458.95	$472.71	$486.90	
Effective Gross Income	$20,580.00	$21,197.40	$21,833.32	$22,488.32	$23,162.97	$23,857.86	
Less: Operating Expenses	$4,116.00	$4,239.48	$4,366.66	$4,497.66	$4,632.59	$4,771.57	
Plus: Net Salvage Value							
Net Income before recapture and taxes	$16,464.00	$16,957.92	$17,466.66	$17,990.66	$18,530.38	$19,086.29	
Present Value Factors w/ above discount rate	0.890266	0.792573	0.705601	0.628172	0.559240	0.497873	
Net Present Value	$14,657.34	$13,440.39	$12,324.49	$11,301.23	$10,362.94	$9,502.54	$71,588.93
Year	7	8	9	10	11	12	
Tax year:	2005	2006	2007	2008	2009	2010	
Potential Gross Income	$25,075.10	$25,827.35	$26,602.17	$27,400.24	$28,222.24	$29,068.91	
Less: Vac. & Collection	$501.50	$516.55	$532.04	$548.00	$564.44	$581.38	
Effective Gross Income	$24,573.60	$25,310.80	$26,070.13	$26,852.23	$27,657.80	$28,487.53	
Less: Operating Expenses	$4,914.72	$5,062.16	$5,214.03	$5,370.45	$5,531.56	$5,697.51	
Plus: Net Salvage Value						$0.00	
Net Income before recapture and taxes	$19,658.88	$20,248.64	$20,856.10	$21,481.79	$22,126.24	$22,790.03	
Present Value Factors w/ above discount rate	0.443239	0.394601	0.351299	0.312750	0.278430	0.247877	
Net Present Value	$8,713.58	$7,990.13	$7,326.74	$6,718.42	$6,160.62	$5,649.13	$42,558.61

Sum of Net Present Values of Cash Flows	**$114,147.54**
Equalization rate in 1999	0.9
Indicated Assessed Value	**$102,732.79**