

**Evan Greenwald**

**v.**

**City of Nashua**

**Docket No.: 18566-00PT**

**DECISION**

The ATaxpayer@ appeals, pursuant to RSA 76:16-a, the ATown=s@ 2000 assessment of \$448,100 (land \$163,100; buildings \$285,000) on a 0.65-acre lot with a professional office building (the AProperty@). For the reasons stated below, the appeal for abatement is denied.

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, 138 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property=s location at the busy intersection of Main and Amherst Streets is a disincentive when leasing space;
- (2) the general location of the Property is removed from the downtown court and hospital

neighborhoods and, thus, is not as attractive to legal and medical-related tenants;

(3) a prospective purchaser would be looking at the Property's income and expenses; therefore, the income approach is the proper method to value the Property;

(4) the "Bramley Appraisal" established a \$300,000 value by the income approach in April, 1998 and a March, 2003 broker opinion indicated Class B office space leased in the range of \$9.00 to \$11.00 per square foot plus tenant electric, which is supportive of Mr. Bramley's appraisal;

(5) the City's appraised income approach should be adjusted to reflect the higher vacancy and actual expenses incurred by the Property; and

(6) the City's sales comparison approach should not be considered because of the size differentials of the leased space, and the City over-inflated both the calculations in the comparables and the time adjustment.

The Town argued the assessment was proper because:

(1) the highest and best use of the Property is for owner-occupation as an office building; therefore, the sales comparison approach is the most appropriate means to value the Property;

(2) a sale-to-assessment analysis (both trended and untrended) was performed on: a) all office building sales in the City from May, 1999 through June 25, 2001; b) those sales ranging in building size from 3,200 to 13,000 square feet; and c) neighborhood sales; the results indicated the Property's per-square-foot assessment fell below both the mean and median assessments of the sales;

(3) a direct sales comparison approach, using 4 comparable sales (with the most emphasis placed

on comparables 1 and 2), indicated a \$501,000 market value estimate of the Property;

(4) the Bramley Appraisal is a limited appraisal prepared with an April 1998 effective date, and did not consider the sales comparison approach; and

(5) the Taxpayer submitted no substantive data to support his request for abatement.

**Board=s Rulings**

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

The Taxpayer relied exclusively on the income approach to value to argue his case of over-assessment. The Taxpayer asserted the price a prospective purchaser of the Property might pay would be based on the historic income and expense records. We disagree. The ability to lease a portion of an office building of this size by the owner/occupant is certainly a positive factor but it is not the controlling motivation for owning such a property. We agree with the City that the sales approach more accurately reflects the bundle of rights an owner/occupant transfers and enjoys when making the decision to purchase a multi-unit property. Larger office buildings are usually purchased by investors for their income-producing capability. However, property of this size, as the evidence supports, is generally acquired by an owner who intends to occupy a portion of it and lease the balance. The rights which an owner acquires include direct management, control of his own space and that which he leases, and the inherent capability of expanding his business in his own property rather than risking relocation. The value of such rights is greater than those reflected in the leased fee interest captured by the income approach of such a property. As a consequence, the board concludes any calculation by the income approach

will not fully value the Property and, thus, the board will not make specific findings as to the income approach calculations submitted by both parties.

The only evidence of value by the sales comparison approach was submitted by the City. The board notes that the 1998 Bramley Appraisal submitted by the Taxpayer did not employ the cost or sales comparison approaches specifically at the instruction of the Taxpayer (see pages 2 and 7 of the Bramley Appraisal). The board finds the City's "Summary Appraisal" reasonably estimates the Property's market value by the sales comparison approach and, in general, supports the assessed value. The Taxpayer argued the City's sales comparison approach utilized an excessive time adjustment rate of 12%. However, the board need not rule on whether the City's time adjustment rate was appropriate because the two sales on which the City placed most weight in its sales comparison approach (comparables 1 and 2) occurred within three months of the April 1, 2000 assessment date and, thus, required *de minimis* time adjustments.

In addition to the City's sales comparison approach, a review of the "small office buildings" sales in the City's "Summary Appraisal" also supports the assessment. The Property contains approximately 7,100 square feet of leaseable area (7,896 square feet "factored area") and its assessed value is bracketed by a sale of a 9,199-square-foot office building for \$675,000 and a 5,181-square-foot office building for \$340,000. While this comparison is very general because no adjustments were made for possible differences in location, condition, quality, etc., it does support the reasonableness of the City's assessment and its market value estimate contained in the Summary Appraisal.

The board does not find the location and access arguments presented are as dramatic as

asserted by the Taxpayer. We find the Property has good visibility and significant off-street parking which offset any possible negative effect of the access arguments.

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

**Certification**

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I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Evan Greenwald, One Main Street, Nashua, New Hampshire, 03064, Taxpayer; David R. Connell, Esq., Nashua Office of Corporate Counsel, 229 Main Street, Box 2019, Nashua, New Hampshire, 03061, counsel for the City; and Chairman, Board of Assessors, Post Office Box 2019, Nashua, New Hampshire, 03060.

Date: April 16, 2003

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Anne M. Bourque, Deputy Clerk

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