

**Beatrice O. Gignac, John D. Gignac, G. Michael Gignac, Jr.,
Frederick J. Gignac and Carol A. Bergeron**

v.

City of Franklin

Docket No.: 19579-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2002 assessment of \$227,900 (land \$37,500; buildings \$190,400) on a 0.241-acre lot containing a convenience store with gas pumps (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers, represented by one of them, G. Michael Gignac, Jr., argued the assessment was excessive because:

(1) the Property is overassessed in comparison to two comparable convenience stores with gasoline pumps (located at 223 and 449 Central Street) after consideration of their larger sizes and superior locations (on corner lots on the City's main artery with higher traffic volumes);

(2) the percentage increase in the assessment (169%) was much higher for the Property than for the comparables (89% and 42%, respectively);

(3) the assessment-record cards reflect two differences in valuing the Property and the comparables, the "income per square foot factor" and the "gross leasable factor," both of which are subjective in nature and should not be different for the three properties, as shown in Taxpayer Exhibit 1;

(4) Taxpayer Exhibit 1 shows several other bases for comparing the assessments with the comparables, including the assessment per square foot of display area, to show the assessment should be abated;

(5) the photographs submitted (Taxpayer Exhibit 3) show its smaller size and existence of an easement (for residential properties at the rear) which severely limits parking at the Property compared to the other properties; and

(6) applying the per square foot and gross leaseable factors noted above, the resulting fair and proportionate assessment of the Property is \$172,600, as computed in "Exhibit H" in Taxpayer Exhibit 1.

The City argued the assessment was proper because:

- (1) a complete revaluation was performed for the City for tax year 2001; however, because of the late turnover of the project and other issues, the values were not used but were updated and instituted for tax year 2002;
- (2) the prior assessment for tax year 2001 was based on a revaluation performed approximately ten years ago and, therefore, computing the annual percentage increase in assessment is not meaningful;
- (3) the Property was built in 1960, is in very good renovated condition and is the lowest assessed gas station/convenience store property in the City;
- (4) there were no sales of gas station/convenience stores in the Upper Lakes Region prior to and during 2002; subsequent to 2002, two sales occurred and their sales' prices reflected that the market places a premium on properties with existing underground storage tanks;
- (5) because of economies of scale, larger properties sell for less per square foot than smaller properties, which is reflected in the assessment methodology, as shown on the slight differences in the factors utilized in the assessment-record cards;
- (6) both Central Avenue and North Main Street are major transportation arteries leading in and out of the City and the traffic volumes of 14,000 cars per day for Central Avenue and 12,500 cars per day for North Main Street are not too dissimilar;
- (7) the City used the income approach as its primary method of valuation; the income per square foot factor in the valuation model relates to utility, configuration and location considerations and the gross leasable factor relates to size and condition considerations; and
- (8) the Taxpayers presented no evidence of market value and failed to meet their burden of proof.

Board's Rulings

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

The parties agreed the department of revenue administration's ("DRA") equalization (weighted mean) ratio was 94.1% for the 2002 tax year. The Property's indicated market value, when the assessment is equalized by that ratio, is \$242,200 (rounded) ($\$227,900 \div .941$).

While the Taxpayers prepared and presented extensive computations based on various methods of comparing assessments, the Taxpayers presented no credible evidence of the market value of the Property. To carry their burden, the Taxpayers should have made a showing of the Property's market value, which, when compared to the Property's assessment and the general level of assessment in the City, would support their claim of a disproportionate assessment.

See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Taxpayers argued the City erred in subjectively assessing the Property by not utilizing the same "income per square foot factor" and "gross leaseable factor" as it had on two "pure" comparables the Taxpayers stated were "carbon copies" of the Property. The Taxpayers stated the Property and the comparables (233 Central Street and 449 Central Street) differed on two points only, location and size of the retail convenience stores. One of the Taxpayers stated "all three properties sell the same line of retail products, except the larger stores have more variety and more products." Further, they argued the location of the Property on North Main Street was inferior to the Central Street comparables.

Differing square foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per square foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), assessment on a per square foot basis can differ to reflect this market phenomenon. Further, although the convenience store is smaller than the two comparables, that is but one of the factors that must be considered in valuing a gas station/convenience store property.

The board also was not convinced the location of the Property adversely affected its value. The City's testimony revealed the traffic patterns on Central Street and North Main Street were within 10% of each other and the evidence of gallonage pumped (City's submission dated December 20, 2004) on each property contradicted the Taxpayers' assertions. In addition, a location farther distant from two competitors, who sell the same convenience items and are physically closer to each other, could add, rather than detract, from the value of the Property.

If the board were to find a "proportional and fair assessment" of \$172,600, that estimate by the Taxpayers, when equalized by the DRA's ratio of 94.1%, would indicate a market value for the Property of \$183,400 (rounded). The equalized values of 233 Central Street and 449 Central Street are \$284,900 (rounded) and \$282,900 (rounded), respectively. Thus, the Taxpayers are asking the board to consider the Property's market value is approximately \$100,000 less than either of their two comparables. The evidence did not support such a conclusion.

The City submitted sales of gas station/convenience stores that occurred subsequent to tax year 2002 for comparison purposes. These sales reflected the premium paid for gas stations with existing gas tanks. The City testified it used consistent methodology in its assessing

practices and supported its testimony through the submission of comparable assessments. This testimony is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). In fact, a review of the assessment-record cards for the Property and the Taxpayers' two comparables indicates the City did recognize a difference in the Property's value (by approximately \$40,000). There was also no dispute the Property is the lowest assessed gas station/convenience store in the City.

Further, to the extent the Taxpayers argued their assessment increased significantly (169%) from the previous 2001 valuation, that argument is not proof the Property was overassessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The City's reassessment is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentage increases from prior assessments. Regarding the size of the assessment increase, the City noted the 2001 assessment was based upon a revaluation that was about ten years old.

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(f). 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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Beatrice O. Gignac, 1250 U.S. 19 South, 174 Azalea Drive, Tarpon Springs, Florida 33589, Taxpayer; John D. Gignac, Post Office Box 5333, Williamsburg, Virginia 23188, Taxpayer; G. Michael Gignac, Jr., 2 Meservey Lane, Lynnfield, Massachusetts 01940, Taxpayer; Frederick J. Gignac, RFD #1, Academy Road, Suncook, New Hampshire 03275, Taxpayer; Carol A. Bergeron, 1 Waterhurst Court, Sacramento, California 95831, Taxpayer; and Chairman, City Council, City of Franklin, 316 Central Street, Franklin, New Hampshire 03235.

Date: March 1, 2005

Anne M. Stelmach, Deputy Clerk

**Beatrice O. Gignac, John D. Gignac, G. Michael Gignac, Jr.,
Frederick J. Gignac and Carol A. Bergeron**

v.

City of Franklin

Docket No.: 19579-02PT

ORDER

The board has reviewed the Taxpayers' "Motion for Reconsideration" filed on March 21, 2005 (the "Motion"). The Motion is denied.

Rehearing and reconsideration motions are governed by RSA 541:3 and TAX 201.37. The board does not find any "good reason" to grant the motion, as specified in this statute and rule.

The board does not agree with the Taxpayers that comparing computed averages, such as assessments per square foot, is evidence of disproportionality. The board specifically addressed this point in the Decision at p. 5. The board focused on the assessments of the two comparable gas station/convenience stores (located at 233 Central and 449 Central) and they both have larger sizes and lower assessments per square foot than the Property. The board found no "inconsistencies" in the City's testimony; if the Taxpayers perceived any, they were obligated to

develop the evidence through cross-examination of the City's witness or through direct or rebuttal evidence of their own.

The Taxpayers also disagree with the board's conclusions regarding the effect of the location of the Property. Again, the board made specific findings on the issue of location and concluded that the location (in comparison to the other two competitors identified above) did not "adversely affect [] its value." Id. As further noted in the Decision, "the Taxpayers presented no credible evidence of the market value of the Property." Id. at p. 4. Disproportionality is tested by market value and the level of assessment, not by comparisons of the assessments on a few other properties.

In summary, the Motion fails to establish "good reason" for a rehearing. No showing has been made that the board overlooked the facts or the law or made an error affecting the Decision. See TAX 201.37(d). The Motion is therefore denied.

Any appeal of the Decision is by petition to the supreme court made within 30 days of this Order. See RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

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Bergeron, 1 Waterhurst Court, Sacramento, California 95831, Taxpayer; and Chairman, City Council, City of Franklin, 316 Central Street, Franklin, New Hampshire 03235.

Date: April 4, 2005

Anne M. Stelmach, Clerk