

**Framatone Connectors USA Inc.**

**v.**

**City of Manchester**

**Docket No.: 19699-02PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2002 assessment of \$3,308,800 (land \$188,000; buildings \$3,120,800) on Map 0717, Lot 0004, a 4.23-acre lot with an industrial office building (the “Property”). (The Taxpayer also owned, but did not appeal, Map 0717, Lot 0016, a 3.24-acre lot and building, which was sold in May, 2002; the parties do not dispute this other lot was properly assessed.) 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, 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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is owner-occupied and is located in the Manchester East Industrial Park;
- (2) the land was purchased in 1988 and a two-story building with more than 52,820 square feet was constructed for industrial use consistent with the zoning for the park;
- (3) qualified, independent appraisers at Fremeau Appraisal prepared a summary report (Taxpayer Exhibit 5) estimating the value of the Property as \$3,600,000 and therefore the assessment should be abated to \$2,757,600 based on the City's level of assessment of 76.6% for that year;
- (4) the Property has characteristics of both an office and an industrial building and the highest and best use is as "office/R&D [Research and Development]," the present use;
- (5) market conditions were "soft" for this type of property in 2002, with relatively high vacancy rates, and there were only a limited number of comparable sales, with the market improving and stabilizing in 2003 and 2004, causing the Taxpayer to utilize 2004 sales in its appraisal; and
- (6) the Property is entitled to a substantial abatement, larger than the amount the City is now willing to recognize.

The City argued the assessment, when abated to \$3,140,500 (for the reasons stated in Municipality Exhibit A, its valuation report), is proper because:

- (1) the City completed a revaluation in 2001 and the assessment did not change in 2002;
- (2) there is evidence of appreciation in property values, albeit at a lesser rate for commercial/industrial properties (6% per year) than for residential properties (10% to 15% per year);
- (3) the Property consists of predominantly finished office space, making some of the Taxpayer's sales comparisons to properties with more predominant industrial and warehouse uses less valid;

(4) the Property is conceded to be very good to excellent quality in a location that is evolving to higher value uses than more traditional industrial parks;

(5) the Taxpayer and the City have submitted one common property (875 Holt Avenue) located in the same industrial park and this is the best comparable because of its location and use; and

(6) the City's estimate of market value is \$4.1 million and, when adjusted by the level of assessment, indicates a "fair and equitable" assessment is \$3,140,500.

The parties stipulated the median level of assessment in the City was 74.9% in tax year 2002.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$3,070,900, determined by applying the median level of assessment (74.9%) in tax year 2002 to an estimated market value of \$4.1 million (rounded).

The parties agreed the income and sales comparison approaches were better indicators of value than the cost approach. The Taxpayer's use of the cost approach yielded an even higher estimate of value (\$4,220,000). See Taxpayer Exhibit 5, p. 27.

The board finds the City's application of the income approach to be more reasonable on the whole than the Taxpayer's for several reasons. Chief among them was the choice of a capitalization rate. The Taxpayer's use of an "equity yield rate" of 18% was overly high for an owner-occupied building and 14%, the City's estimate, is more reasonable and supportable. The board therefore finds the overall capitalization rate of 9.5% computed by the City is more reasonable than the higher rate used by the Taxpayer.

Another difference in the respective analyses concerned the rental rate used to estimate potential gross income. Based on the evidence presented, the board finds \$9.25 per square foot,

the estimate used by the City, to be more reasonable and supportable than the \$9.00 per square foot estimate used by the Taxpayer, given the “good to excellent” condition of the building and its location. See also Taxpayer Exhibit 4, Taxpayer Exhibit 5, pp. 53-56, and Municipality Exhibit A, pp. 2-5 (containing exterior and interior photographs of the building). The attractive condition of the Property, and its ability to attract a higher rent, is further reflected in testimony from the Taxpayer’s representatives that the highest and best use was mixed commercial/industrial rather than a conventional industrial use.

In applying its experience and judgment, see RSA 71-B:1, to the valuation issue, the board used the City’s vacancy and collection factor (7.5% rather than 9%) and the City’s total expenses and reserves (somewhat higher than the Taxpayer’s). Based on these estimates and assumptions, the board found the City’s estimate of market value of \$4.319 million (rounded) to be more reasonable than the Taxpayer’s much lower estimate (\$3.788 million). Compare Municipality Exhibit A, pp. 20-25, with Taxpayer Exhibit 5, pp. 35- 41.

Turning to the sales comparison approach, the Taxpayer’s appraiser, Alec Jones of Fremeau Appraisal, stated two comparable sales (B-3 and B-6) in Taxpayer Exhibit 5 were the best indicators of value. The City cast considerable doubt on the validity of comparable B-3 for several reasons.

First, B-3 (located in Salem, New Hampshire) sold twice (first in 2001 for \$5.8 million and then in 2004 for \$5.0 million), but the Taxpayer only relied on the second, lower sale price even though it was farther away in time from the assessment date. There was also some indication the second sale may not have been at arm’s-length, since the mortgage arising from the first sale remained in place (rather than being discharged and a new mortgage recorded). The

City also questioned, with some reason, several of the adjustments made by the Taxpayer's appraisers to B-3 which resulted in a net -15% adjustment.

As noted above, the Taxpayer's B-7 Comparable (875 Holt Avenue, presented in Taxpayer Exhibit 6) is the same as the City's Comparable 4. 875 Holt Avenue is located in the same industrial park and has a similar building size (56,000 square feet compared to 52,820 for the Property) and age (1988 compared to 1987 construction). The Taxpayer noted this comparable was occupied by Verizon and that a "variance" had been obtained in 1993 to permit a more commercial use (as a call-in center). There is no evidence to suggest that a similar variance, if needed, could not be obtained for the Property to allow a more intensive commercial use. The City's representative testified the City would be inclined to give such an approval because of the evolving nature of this industrial park to higher-valued uses.

Based on the evidence, the board finds the 875 Holt Avenue sale for \$5,000,000 on November 30, 2004, adjusted for market conditions at 6% per year, is the best indicator of value. Applying this adjustment yields a value of \$75 per square foot and an estimated value for the Property, using the sales comparison approach, of between \$3.95 million and \$3.96 million<sup>1</sup> as of the April 1, 2002 assessment date.

Reconciling the income and sales comparison approaches, the board finds the City's \$4.1 million estimate of market value for the Property to be more reasonable than the substantially lower estimate (\$3.6 million) made by the Taxpayer. Applying the median level of assessment to this estimate, results in an assessment of \$3,070,900 (\$4.1 million x 0.749) and the Taxpayer is entitled to an abatement to this assessed value for tax year 2002.

<sup>1</sup> The estimate varies with the specific square footage number employed in the calculations: compare Municipality Exhibit A, p. 8 (52,710 square feet) and Taxpayer Exhibit 5, p. 14 (52,820 square feet). The difference is not material in this appeal.

If the taxes have been paid, the amount paid on the value in excess of \$3,070,900 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Steven M. Poole, Extax Consulting Group, LLC, 210 Broadway, Suite 106, Lynnfield, Massachusetts 01940, representative for the Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, New Hampshire 03101.

Date: July 29, 2005

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Anne M. Stelmach, Clerk

**Framatone Connectors USA Inc.**

**v.**

**City of Manchester**

**Docket No.: 19699-02PT**

**REVISED DECISION**

On August 23, 2005, the “City” filed a timely Motion for Reconsideration (“Motion”) of the July 29, 2005 “Decision.” The “Taxpayer” did not file any opposition to the Motion. The Motion is granted, pursuant to TAX 201.37(g).

The Motion is clear in representing the City used the trimmed weighted mean (76.6%) as its measure of the level of assessment for tax year 2002 and applied this statistic consistently in granting abatements and in settling tax appeals. See Motion, ¶ 11. This consistency is noteworthy, as is the Taxpayer’s use of the same statistic to request an abatement. See Taxpayer Exhibit 5 (Real Estate Appraisal Report).

The case law requires that one “uniform” level of assessment be applied to all property within a taxing jurisdiction and, in the event of a dispute, the board is empowered to resolve the issue of which statistic should be used. See Appeal of City of Nashua, 138 N.H. 261, 266-67 (1994); and Appeal of Andrews, 136 N.H. 61, 64-65 (1992). Because the parties agree the level

of assessment in the City for tax year 2002 was represented by the trimmed weighted mean and this statistic was used by the City in other areas, it will be used in this appeal.

Applying the 76.6% level of assessment to the \$4.1 million market value finding for the “Property” results in an assessment of \$3,140,600. The Decision is therefore revised, as follows: the Taxpayer is entitled to an abatement based on a tax year 2002 assessment of \$3,140,600; all other aspects of the Decision remain unchanged.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Revised Decision has this date been mailed, postage prepaid, to: Steven M. Poole, Extax Consulting Group, LLC, 210 Broadway, Suite 106, Lynnfield, Massachusetts 01940, representative for the Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, New Hampshire 03101.

Date: September 12, 2005

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Anne M. Stelmach, Clerk