Precision Lumber, Inc.

v.

Town of Wentworth

Docket No.: 19725-02PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2002 assessment of $279,100 (land $39,400; buildings $239,700) on Map/Lot 11-06-11, a 4.4-acre lot with a building housing a sorting/stacking lumber machine; and $855,500 (land $53,100; buildings $802,400 on Map/Lot 11-06-13, a 15.9-acre lot containing numerous lumber mill buildings including three buildings housing seven lumber drying kilns (the "Property"). The Taxpayer also owns three other adjacent parcels, part of the lumber mill operation, but did not file appeals on those parcels. 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). We find the Taxpayer failed to prove the Town's assessments were unlawful.

Description of Property

The Taxpayer's five parcels encompass an integrated lumber mill comprised of multiple buildings housing different stages of the production of dried lumber with the adjoining land used for storage of log inventory and sawed lumber and access roads between the various areas of the lumber mill. On June 9, 2005, prior to the hearing, the board viewed the Property with the parties and observed the process and buildings associated with taking the white pine logs through sawing, sorting, stacking, kiln drying, planing and wrapping to the finished product ready for wholesale or retail sale.

Parties' Arguments

The narrow issue on appeal is whether the structures housing the large lumber sorter/stacker machine and the wood drying kilns ("Disputed Structures") are taxable real estate. The Taxpayer argued the Disputed Structures are so integrally involved in the production process of sorting, stacking and drying lumber that they are not taxable real estate but rather are factory machinery not subject to taxation. The Town, on the other hand, argued the two structures were buildings under the plain and ordinary meaning of such term, and thus, are taxable under RSA 72:7.

Board's Rulings

The board rules the Disputed Structures are buildings and, are thus, taxable under RSA 72:7.

The board agrees with the Town's argument that the starting point of determining what rights are taxable as real estate and valuing those rights begins with a review of the highest and best use of the Property. Based on the testimony of Rick Vincent, the Town's contract appraiser, Larry King, the owner of Precision Lumber, Inc., and the board's view of the Property, we

conclude the highest and best use of the five interrelated lots is as developed and utilized for sawing white pine logs and finishing them to dried, planed lumber ready for market. The Property has been historically used in this manner and expanded in recent years, to improve its efficiency and profitability through the acquisition and assemblage of the sorter/stacking machine and the expansion of the drying kiln buildings, both critical, according to Mr. King, in making the lumber mill operation profitable.

The importance of a highest and best use analysis in determining taxable rights and their value was addressed in 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284 (1982). There the court found a medical clinic containing specialized architectural features had a highest and best use as a medical clinic, and thus, those features should be assessed because to do otherwise would be to allow valuable and taxable property to escape taxation. Here, the Disputed Structures have specialized features that make them valuable in their respective phases of processing lumber to a finished product. Similar to the clinic in the 590 Realty case, the board finds the highest and best use of the Disputed Structures is as part of an overall process of sawing and finishing lumber, and thus, they contribute to the overall value of the integrated mill property. Just as the specialized architectural features of a doctor's clinic add to the clinic's overall value, the Disputed Structures are uniquely designed and constructed to assist the lumber mill property in achieving its highest and best use. The Disputed Structures, as key components of the lumber mill, would, no doubt, contribute significantly to the market value of the lumber mill if sold.

The legal question presented in this case of where in the building/factory machinery spectrum the Disputed Structures are located was summarized in Taxpayer Exhibit 2 prepared by the Taxpayer's attorney, Steven Winer ("Winer Spectrum"). The board agrees with Attorney

Winer's concept that there is such a spectrum where different structures can fall, but we disagree with his conclusion that the Disputed Structures are in the factory machinery end of the spectrum rather than the land and buildings end for the following reasons.

While neither of the terms "building" or "factory machinery" are statutorily defined, the parties presented and briefed the applicable New Hampshire case law that does contain definitions for those terms. A "building" is defined in Appeal of Town of Pelham, 143 N.H. 536, 538 (1999) quoting Webster's Third New International Dictionary 292 (unabridged ed. 1961) as "a constructed edifice designed to stand more or less permanently, covering a space of land, usu[ally] covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals or other useful structures - distinguished from structures not designed for occupancy (as fences or monuments) and from structures not intended for use in one place (as boats or trailers) even though subject to occupancy."

The supreme court has addressed the definition of factory machinery in several cases including Crown Paper Co. v. City of Berlin, 142 N.H. 563 (1997); King Ridge, Inc. v. Town of Sutton, 115 NH. 294 (1975); and Kolodny v. City of Laconia, 96 N.H. 337 (1950). In Crown Paper Co. the court defined factory machinery as "instruments of production or machines designed for use in mills or factories whether or not they were part of or affixed to the realty." Crown Paper Co. at 568.[1]

[1] Crown Paper Co. also went on to discuss a "rare" exception to the fact that factory machinery is normally not taxed. The court stated that if such factory machinery is "intimately intertwined" so "that some characteristic of the underlying realty makes a special or other use of the factory machinery useful, and that the special or other use of the factory machinery renders the underlying realty useful" it potentially could be taxed. Id. at 569. The board need not address this exception because we conclude the two Disputed Structures are clearly "buildings" as defined in Pelham and not instruments of production as argued by the Taxpayer.

The board finds the Disputed Structures have all the characteristics of a building, and thus, are taxable pursuant to RSA 72:7.

The sorter/stacker building has a concrete foundation, steel frame, metal siding and roof. The building is insulated and contains windows and doors and provides a sheltered environment for the sorter/stacker machine, control room, electrical and pneumatic support systems and employees. The fact that the building was constructed around and after the machine was welded to the steel support in the foundation makes it no less a building. The board is unaware of any definition or case law that distinguishes the stage of construction versus the installation of its contents as determinative of whether it is a building or not. The board is familiar with other special purpose type industrial buildings where large equipment or tanks necessitate a portion of the building to be moveable or be constructed after such large bulky items are installed. Regardless of when constructed, after completion, the sorter/stacker building houses the environment in which the sorter/stacker machine performs its function as part of the lumber mill production just as any other factory or mill building houses its respective machinery.

We also find without merit the Taxpayer's argument that because the building is specially designed for housing the sorter/stacker machine, it has little market value except for that purpose. Uniqueness of a building's configuration does not disqualify it from being a "building." Buildings, by their very nature, vary in shape, size and construction detail as the housing requirements of the function that takes place within the sheltered environment varies. For example, a dwelling has a very different size, shape and construction detail than an industrial or warehouse building. A dwelling will have more elaborate exterior detail and fenestration with extensive interior finish and infrastructure fixtures (heating, plumbing, electrical, etc.), while industrial/warehousing buildings can have a very simple exterior, sometimes with no windows

and only doors to access the minimally finished and modified interior. Both are very different and yet are well suited for their respective highest and best uses and are no less buildings in the eyes of RSA 72:7. A building, whether of a unique configuration or not, contributes to a property's market value to the extent it is a critical and integral part of the highest and best use of a property as a whole.

The drying kilns, again, while housing a very specialized processing function, have all the customary components of a building. The drying kilns have concrete foundations with framed, insulated walls and roof components. The drying kilns have no windows, but they have sliding doors to accommodate the placing and removal of stacked lumber for drying on the interior. The Town testified it made a distinction between the building portion of the drying kilns and the components related to the drying process such as the heating fans, vents and control mechanics and only assessed the shell of the building. The drying kiln shell assessed by the Town creates the sheltered and modified environment in which the drying of lumber can occur. As with the building around the sorter/stacker machine, the drying kiln shell is the building that houses the sheltered environment for drying lumber. Cf. Creative Biomolecules, Inc. v. City of Lebanon, Docket No.: 16861-96PT. (The demising walls, clean rooms and special finishes on the walls and floors within a biopharmaceutical building are all part of the building taxable under RSA 72:7 because they house the environment in which the biopharmaceutical production occurs.) Again, the fact the drying kilns have limited alternative uses is not determinative of whether they are buildings taxable under RSA 72:7. The drying kilns, as the sorter/stacker building, are important buildings that house an important step of the process of finishing the sawed lumber, and thus, contribute to the market value of the property as a whole.

For all of the above reasons, the board find the Disputed Structures are clearly in the "building" end of the Winer Spectrum. Attorney Winer argued they were similar to the large silo tanks in Weeks Dairy Food, Inc. v. City of Concord, Docket No.: 16143-95PT (March 31, 1998) which the board found were "more closely connected to the processing functions. . ." because of their internal storage, cooling and mixing functions. The board agrees that the silo tanks are examples of large structures that are at the "factory machinery" end of the spectrum but they are distinguishable from the Disputed Structures. The silo tanks' primary function is as an integral part of the "seamless web of production" of the processing machinery of raw milk rather than creating or housing the environment in which factory machinery is located and production occurs. The Disputed Structures house machinery and the controls that process lumber but are not the actual instruments of production as the silo tanks were in Weeks.

In short, the Disputed Structures are buildings as defined in Pelham because they serve as "factories" for the production they house and, are thus, taxable.

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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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Steven Winer, Esq., Orr & Reno, P.A., One Eagle Square, Post Office Box 3550, Concord, New Hampshire 03302, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Wentworth, Post Office Box 2, Wentworth, New Hampshire 03282; and Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, New Hampshire 03766, counsel for the Town.

Date: July 11, 2005

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Anne M. Stelmach, Clerk