

Alabama Farmers Cooperative, Inc.

v.

Town of Lempster

Docket No.: 20452-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$1,069,100 (land \$104,600; buildings \$964,500) on Map 8/Lot 380.206, a 54-acre parcel improved with various structures including commercial greenhouses, warehouse buildings and residential buildings (the “Property”). 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 purchase of the Property in July, 2003 for \$340,000 is indicative of its market value;
- (2) the Property, along with land and buildings on the west side of Rte 10, had been for sale for three years with an asking price of \$850,000;

(3) an appraisal by Power Associates (the "Power Appraisal," Taxpayer Exhibit No. 1) estimated the Property's market value as of October, 2003 to be \$400,000; and

(4) the greenhouses are exempt from taxation because they meet the criteria set forth in RSA 72:12-d, including the fact that they are not permanently affixed to the real estate and can be disassembled.

The Town argued the assessment was proper because:

(1) the sale of the Property is not indicative of market value because it was part of the lengthy liquidation of real estate owned by the High View Church Farm (d/b/a "Jolly Farmer") after its members moved to Canada and because it was part of a purchase and immediate partial resale by an individual who had purchased real estate from High View Church Farm on both sides of Rte 10 and then sold the east side to the Taxpayer for nearly the total purchase price;

(2) the Power Appraisal was prepared for financing purposes and contains errors, making it an unreliable estimate of value;

(3) the Town made reasonable adjustments to the assessed value to take into account physical, economic and functional depreciation;

(4) the Taxpayer received a modest abatement in tax year 2003 and a larger one in tax year 2004; and

(5) the Taxpayer failed to satisfy its burden of proving disproportionality or that it was entitled to a larger abatement.

The parties agreed that the department of revenue administration's 2003 equalization ratio of 100% is a reasonable estimate of the level of assessment within the Town.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$770,100 (land \$104,600; buildings \$665,500). This assessment is based on: 1) the board ruling the greenhouses are not exempt structures under RSA 72:12-d and are therefore taxable as real estate; and 2) finding additional

economic/locational depreciation should be applied to various improvements to recognize their unique and limited market and the Property's rural location.

Greenhouses

RSA 72:12-d, adopted in 1998, provides for the exemption of "[d]emountable, plastic-covered greenhouses."¹ For the following reasons the board finds the greenhouses on the Property are not eligible for the exemption.

The Town's assessment records (card 2 of 7) lists a total of 192,160 square feet of greenhouses. The greenhouses are configured with a center greenhouse structure and a concrete slab 32 feet wide by 380 feet long intersected on one side by 12 – 30 x 200 foot greenhouses and on the other side by 12 – 30 x 300 foot greenhouses. On one end, the center greenhouse is attached to a warehouse building and on the other end a smaller warehouse building is attached. The photographs enclosed with the Town's submission show the hoops of the 24 greenhouses are anchored into a

¹ I. Demountable, plastic-covered greenhouses shall be exempt from taxation as provided by RSA 72:6, if all of the following qualifications are met:

- (a) Removal of the demountable greenhouse will not affect the utility of the underlying real estate.
- (b) The demountable greenhouse is not permanently affixed to the underlying real estate with concrete or similar non-portable footings.
- (c) Removal of the demountable greenhouse can be accomplished without significant damage to the greenhouse and will not render the greenhouse unfit for subsequent use as a demountable greenhouse.
- (d) The demountable greenhouse is specifically designed, constructed, and used for culture, propagation, and protection of agricultural products.
- (e) The demountable greenhouse is not used for the retail sale of any non-agricultural products.

II. For purposes of this section, the term "demountable, plastic-covered greenhouse" means:

- (a) Framework.
- (b) Coverings.
- (c) Electric services not fixed to the underlying real estate.
- (d) Benches.
- (e) A source of heat not fixed to the underlying real estate.
- (f) A source of ventilation not fixed to the underlying real estate.
- (g) An irrigation system not fixed to the underlying real estate.

concrete footing on their long sides. These features cause the greenhouses to be permanently affixed to the underlying real estate and, if considered alone, would disqualify the greenhouses from exemption. See RSA 72:12-d, I (b).

Further, the board agrees with the Town that while the greenhouses could be disassembled, doing so would certainly “affect the utility of the underlying real estate”: namely, the concrete pads and concrete footings and warehouse structures the greenhouses are attached to. As described during both parties’ presentations, the greenhouses are a component of a wholesale business of producing transplants, which involves the moving of production material (flats, growing medium, etc.) and plants between the greenhouses and the adjacent warehouse and loading dock areas. Thus, the disassembling of the greenhouses would make the concrete slab, footings and the warehouse structures less functional, thereby affecting their utility. See RSA 72:12-d, I (a).

Also disqualifying the greenhouses from the RSA 72:12-d exemption is the fact the electric power and water supply run underground to the main central greenhouse before being split up for utilization in the adjacent 24 greenhouses. See, RSA 72:12-d, II (c).

All these facts demonstrate the greenhouses’ physical attachment to the surrounding real estate and their permanency. Thus, the board concludes they are not “demountable, plastic covered greenhouses” that RSA 72:12-d envisions to exempt.

Market Value

The board considered the evidence of the protracted marketing efforts and eventual sale and resale of the Property as to whether it qualifies as an arm’s-length-transaction (Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988)) and is conclusive evidence of its market value. While the board agrees the marketing time and eventual sale is some indication of the unique nature and narrow market for such property, we find the Taxpayer failed to provide adequate details of the sale for the board to

accept the sale price as persuasive evidence of market value. Conversely, the board found the Town presented adequate reasons (e.g., High View Church Farm decided to sell all of their large real estate holdings at once; buyer selling the Property to the Taxpayer for 97% of his purchase price of both the Property and the parcel on the west side of Rte 10; the Property only being marketed locally) to question the probative value of either the asking price or eventual sale price.

The board is also unable to give any weight to the Power Appraisal value estimate of \$400,000, primarily for two reasons. First, the Power Appraisal, prepared for financing, did not value the greenhouses because it determined the greenhouses were personal property. As noted in the previous section, we find they are taxable realty and thus must be valued as part of the Property as a whole. Second, the Power Appraisal utilized industrial warehouse comparables in the sales and income approaches to estimate the Property's market value. Because the Property's warehouse space is integrated with its primary function of greenhouse production, we find the sale and rental rates derived from those comparables do not capture all the value reflected in the integrated use of the greenhouses and warehouses.

That having been said however, the board finds the circumstances noted above are some evidence that the cost approach utilized in the Town's assessing methodology needs to be significantly tempered to arrive at a reasonable indication of market value. The Town testified for 2004 an abatement was granted to reflect two factors: 1) physical depreciation that occurred during the winter (between April 1, 2003 and April 1, 2004) due to frozen pipes, etc.; and 2) an application of additional economic/locational depreciation reflecting the unique nature of the improvements and its rural setting. The board finds the additional economic depreciation the Town applied in 2004 was

equally applicable for 2003 and has applied the factors in the following manner.²

Card #	Abated Assessed Value	Depreciation	Total Percent “Good”
Card #1	L - \$104,600 (agreed) B - \$178,700 F - \$ 55,500	15/40	45%
Card #2	\$139,000	36/15/40	9%
Card #3	\$ 7,500	28/20/15	37%
Card #4	B - \$ 45,200 F - \$ 4,200 (\$8,500 x .49)	11/40	49%
Card #5	\$ 50,800	13/20	67%
Card #6	B - \$ 97,400 F - \$ 50,500	22/20/40	18%
Card #7	\$ 36,700	15/40	45%
TOTAL	\$770,100		

Thus the board finds the assessment should be abated to \$770,100 for 2003. The parties agreed, due to the subsequent changes by the Town to the 2004 assessments, the board’s ruling applies only to tax year 2003. See RSA 76:17-c.

If the taxes have been paid, the amount paid on the value in excess of \$770,100 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

² The board has applied the same economic depreciation as the Town did in 2004 with two exceptions: 1) on card 4 of 7 (the contemporary dwelling), the board has applied the same 49% good adjustment to the extra feature valuation of the fireplace as applied to the dwelling; and 2) on card 7 of 7, a 40% economic depreciation is applied (rather than the 30% depreciation), to the warehouse assessment to be consistent with the economic depreciation the Town applied to the other warehouse type improvements on the Property.

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

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joseph W. Worthen, II, Esq., Faulkner, Freund, Worthen & Caffrey, P.C., 91 Court Street - PO Box 527, Keene, NH 03431, counsel for the Taxpayer; Michael C. Shklar, Esq., Elliott, Jasper, Auten & Shklar, LLP, 35 Main Street, Newport, NH 03773, counsel for the Town of Lempster; and Chairman, Board of Selectmen, Town of Lempster, PO Box 33, East Lempster, NH 03605.

Date: 11/13/06

Anne M. Stelmach, Clerk