

**C.P.J. Trust**

**v.**

**Town of Pelham**

**Docket No.: 23072-06PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$628,600 (land only) on Map 41/Lot 6-135, a 36.9 acre lot (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) a self-contained appraisal report prepared by Donald V. Spring, MAI (the “Spring Appraisal,” Taxpayer Exhibit No. 1), estimated the Property’s market value to be \$225,000 as of the April 1, 2006 assessment date based on the sales comparison approach;

- (2) the Property has substantial wetland areas and approximately eight usable acres (an estimate the Town generally agrees with) and is not in a prime location for industrial development;
- (3) the highest and best use of the Property is for a single, owner-occupied, industrial use;
- (4) the “Town’s Analysis” (Municipality Exhibit A) is not an appraisal or the work of a qualified appraiser and there are arithmetical and other errors in the direct sales comparison grid including a 10% “size adjustment” that is not explained at all, which lessens its reliability;
- (5) the Town did not physically inspect any of the properties used in the comparable sales grid;
- (6) the developable portion of the Property is some distance from its Pulpit Rock Road frontage (about 600± feet) which will require additional development costs for its access; and
- (7) the assessment should be abated to the \$225,000 market value estimate in the Spring Appraisal adjusted by the 99.1% level of assessment in the Town.

The Town argued the assessment was proper because:

- (1) the Town performed a revaluation for tax year 2006;
- (2) the Property has two points of access (from Lori Lane and from a right-of-way on Pulpit Rock Road, adjacent to other industrial developments);
- (3) the Town does not dispute the Property has approximately eight (“8.12”) usable acres of land for industrial development and did a property-specific sales analysis, using the direct sales comparison approach, which estimated the Property’s market value to be \$80,200 per usable acre, supporting the proportionality of the assessment;
- (4) the appeal document filed in August, 2007, states the market value of the Property was \$525,000 and references an “appraisal attached” (but no appraisal was attached to the appeal document); and
- (5) the Taxpayer failed to meet its burden of proving an abatement is warranted.

The parties agreed the 2006 level of assessment in the Town was 99.1%, based on the Town's median ratio computed by the department of revenue administration.

After the conclusion of the July 29, 2009 hearing and during the board's deliberations, the board directed one of its RSA 71-B:14 review appraisers to perform an independent valuation of the Property. On September 1, 2009, Ms. Theresa M. Walker submitted her summary appraisal report (the "Walker Report"). The Walker Report estimated the Property's April 1, 2006 market value to be \$440,000. Copies of the Walker Report were provided to the parties with an opportunity for them to comment within fourteen (14) days. In a September 14, 2009 letter, Attorney Hilliard requested an extension to file comments by September 18, 2009 which the board granted. Both parties then filed comments to the Walker Report.

### **Board's Rulings**

Based on the evidence and testimony, the board finds the proper assessment to be \$436,000 (rounded) based on a market value finding of \$440,000 and the Town's 2006 general level of assessment of 99.1%.

The board considered the evidence presented by both parties and the Taxpayer's burden of proof. Because the parties utilized somewhat different approaches and data to reach very different conclusions regarding the market value of the Property [initially \$525,000 by Mr. Spring, on behalf of the Taxpayer, which he then revised downward to \$225,000, compared to \$651,224 (\$80,200 per acre x 8.12 useable acres) by the Town's assessors, Wil Corcoran and Monica Gordon], the board also requested and then considered the Walker Report.

In making market value findings, the board weighs all of the evidence, including the appraisal evidence submitted, but also applying the board's "experience, technical competence and specialized knowledge" to this evidence. See RSA 71-B:1; and former RSA 541-A:18,

V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it”). By statute, the board is also authorized to employ its review appraisers who can “review the value of property for tax and eminent domain purposes” to help the board arrive at its findings. See RSA 71-B:14; and, e.g., Appeal of Sokolow, 137 N.H. 642, 644 (1993).<sup>1</sup>

Further, in making findings where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., State of New Hampshire v. Frederick, BTLA Docket No. 23317-07ED (December 3, 2008); cf. Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The board finds the best estimate of the market value of the Property, as of the assessment date, is \$440,000. Ms. Walker researched 24 industrial land sales before selecting four to compare to the Property. The board finds Ms. Walker made reasonable adjustments and followed acceptable, recognized appraisal practices in determining the Property’s market value. See Walker Report, pp. 5-8. The indicated per acre values provided by each of the comparable sales bracket her reconciled unit value and were logically supported.

In making this finding, the board has compared the Walker Report to the evidence submitted by each party and their comments in response to the Walker Report. The board has

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<sup>1</sup> Consequently, the board does not agree with the Taxpayer’s objection that, because the Taxpayer did not ask for or receive an “opportunity to cross examine the Review Appraiser,” the Walker Report should be disregarded. See page 1 of the September 17, 2009 comment letter filed by the Taxpayer’s attorney.

adopted the \$440,000 market value estimate because it finds neither the Spring Appraisal nor the Town's Analysis provide a more reliable indication of the Property's market value for the reasons indicated below.

As noted above, the Taxpayer argued the Property's market value was \$225,000 as of the assessment date, based on the Spring Appraisal. For several reasons, the board finds the Spring Appraisal is flawed insofar as it raises a host of unanswered questions which affect its credibility and the weight that could be placed on it.

First, some of the comparable sales utilized by Mr. Spring had characteristics or features which made their comparability to the Property suspect. For example, comparable sale #1 was a sale the board has some familiarity with because it was utilized in two previous dockets the board has heard and decided. See State v. Windham Road Holdings, LLC, et al., BTLA Docket No.: 22502-07ED (December 14, 2007) and State v. Tuckernuck Development, LLC, et al., BTLA Docket No.: 21518-06ED (December 14, 2007) and the discussion in the Walker Report (at p. 9) pertaining to why the board is unable to conclude sale #1 is a reliable indicator of the market value of industrial property because it probably had a different highest and best use. In particular, it is known there was a substantial amount of aggregate fill material on this sale property which the grantee used for construction purposes on an adjacent property, but this information was not explored or addressed in the Spring Appraisal.

Comparable sale #2 had its size inaccurately listed in the Spring Appraisal, according to the research performed by Ms. Walker. Further, there was a lack of discussion by Mr. Spring regarding its current use status and subsequent resale in February, 2006 for \$1,100,000 (more than twice the sale price used by Mr. Spring in his analysis). In addition, this sale's subdivision and partial development with a medical office building, which is consistent with other uses in its

immediate vicinity, as well as its superior location on a heavily traveled road, casts doubt on whether its highest and best use is similar to the Property which is, as the parties agreed, a site for industrial development, not some other use or mix of uses.

Similarly, comparable sale #3 may not have the same highest and best use as the Property given Ms. Walker's comments regarding the nature of the businesses of the grantor and grantee in this transaction. If the highest and best use conclusion is faulty, the use of this comparable sale and its indicated value conclusion is indeed questionable and of little probative value.

The facts mentioned in the Walker Report regarding comparable sale #4 including the fact the wetlands bisected the buildable area of the site and any resulting impact this situation creates are not addressed in the Spring Appraisal.

Finally, the arm's-length nature of comparable sale #5 is questionable. The details of this sale, as expressed to Ms. Walker by the Town of Londonderry's Assessor, included some land swapping for expansion and wetlands mitigation between the grantee, grantor and the Manchester Boston Regional Airport.

Further, the board notes that, other than comparable sale #2, none of the comparable sales used in the Spring Appraisal appear to have been confirmed with a party involved in the transaction (grantor, grantee or a broker). The importance of obtaining "separate verification" of the terms and details of a transaction from market participants is well recognized. See The Appraisal Institute, The Appraisal of Real Estate (12<sup>th</sup> ed. 2001), pp. 150-51. The lack of verification is a serious weakness that impacts the credibility of the data presented.

In addition, the board finds Mr. Spring's reliance solely on a qualitative analysis, except for his adjustment for market conditions, and the reconciliation of a final unit value which lies outside the range of values determined from the comparable sales raises further doubts regarding

the validity of his market value conclusion. On page 49 of his appraisal, Mr. Spring lists six characteristics to support his use of a qualitative analysis, but his comments under #5 and #6 do not apply to the Property as it is neither “unique” nor “complex” in nature. Vacant industrial land with some wetland considerations and access questions is not a unique occurrence in the State of New Hampshire.

The board notes that “appraisal reports that include qualitative analysis often require more extensive discussion of the reasoning that the appraiser applied particularly if qualitative analysis is applied alone.” The Appraisal Institute, The Appraisal of Real Estate, (12<sup>th</sup> ed. 2001) at p. 430. Further, “if all the comparables are rated superior or are all rated inferior to the subject, it is more difficult to determine a reliable range of value and reach a single value indication using qualitative analysis.” Id. On page 50 of the Spring Appraisal, Mr. Spring rates comparable sale #3 “somewhat superior” to the Property and comparable sale #4 “significantly superior.” Mr. Spring determined the appropriate unit of comparison is the price per useable acre. He does not, however, discuss why comparable sales #3 and #4, which are rated differently, have almost exactly the same unit value indication. The only adjustment to those sales was for market conditions (time). The board finds some explanation is warranted but was omitted from the Spring Appraisal, lessening its reliability.

Mr. Spring’s determination of a unit value to be applied to the Property which is outside the range of unit values determined in his qualitative adjustment summary chart based on five comparable sales raises questions as to whether or not those comparable sales were the best available. Id. at p. 463. (“If the available comparable sales do not bracket the subject’s value, the appraiser should consider employing other analytical techniques to establish such a bracket.”) There was no explanation given by Mr. Spring for the selection of the \$28,000 per acre unit

value. The statement “none of the sales were equal to the subject and none were inferior” does not help the reader of the Spring Appraisal ascertain why \$28,000 per acre was chosen and was deemed to be more appropriate than some other value.

On the other hand, the board finds the Town’s Analysis also has shortcomings which make the board unable to agree with the Town’s argument that the Property was not disproportionately assessed.

First, the Town’s assessor, Ms. Gordon, testified she did not visit any of the comparable sales and relied solely on the conversations she had with various assessors in the towns where the comparable sales were located. As discussed above, it is very important to verify the details of each comparable sale with a party involved in that transaction in order to ferret out any unique circumstances or conditions which may either require an adjustment or lead to that sale being removed from consideration.

Second, the Walker Report discusses many of the reasons why the comparable sales used in the Town’s Analysis require either further substantial adjustments or a search for more comparable properties and the board will not reiterate these reasons, especially in light of the positive comments filed by the Town in response to the Walker Report. Page 1 of the September 17, 2009 letter from the Town’s assessors states: “[W]e have thoroughly reviewed the sales comparables and analysis contained [in the Walker Report.] It is our belief that the report is sound and presents a mostly fair representation of the subject property.”

Third, the board concurs with Ms. Walker’s observation that the 10% size adjustment made to each of the comparable sales in the Town’s Analysis essentially results in an adjustment based on the sale price of each comparable rather than reflecting any differences in size. In addition, the board has noted the Town’s comments on the Walker Report include three

observations pertaining to the “useable” and “unusable” areas of the Property and the assessing practices of the Town. The board disagrees with the assumption that a “useable” acre approach to arriving at a market value finding, which the Town itself employed at the hearing and its arguments (\$80,200 per acre x 8.12 usable acres) in order to develop (in its Direct Sales Comparison Analysis in Municipality Exhibit A) its “Indicated Proper Assessment” is invalid. In brief, the board finds there is nothing inconsistent or improper about appraising the market value of the Property as a whole, leaving it to the Town’s assessors to then allocate the total value between land that will have a primary use (for industrial development) and excess land that will support or be ancillary to that development.

For all of these reasons, the board finds the evidence, considered as a whole, supports the finding the market value of the Property per useable acre is \$55,000, leading to a total value indication of \$440,000. When adjusted by the agreed-upon level of assessment in the Town, the assessment should be abated to \$436,000 (rounded). The board has not allocated this value to the 36.9 total acres and the Town shall make this allocation in accordance with its assessing practices. RSA 76:11-a.

If the taxes have been paid, the amount paid on the value in excess of \$436,000 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(g). 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: Russell F. Hilliard, Esq., Upton & Hatfield LLP, 159 Middle Street, Portsmouth, NH 03801, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Pelham, 6 Village Green, Pelham, NH 03076-3172; and Wil Corcoran, Corcoran Consulting Associates, Bayside Village, P.O. Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: November 20, 2009

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Anne M. Stelmach, Clerk