

Signal Aviation Services, Inc.

v.

City of Lebanon

Docket Nos.: 23095-06PT/23529-07PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2006 and 2007 assessments of \$934,300 (land \$868,300; building \$66,000) on Map 131/Lot 1-80000, a leasehold interest in an 8.91 acre property and a fuel facility located thereon at the Lebanon Airport (the “Appealed Property”). At hearing, the parties stipulated the Taxpayer’s estate also included two other properties not appealed: Map 131/Lot 1-80100, with an assessed value of \$1,260,800, consisting of offices, public areas and airplane hangars; and Map 131/Lot 1-11002, with an assessed value of \$9,000 for an airport condominium hangar (collectively, the “Nonappealed Properties”). For the reasons stated below, the appeals for abatement are dismissed.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality.

Id. We find the Taxpayer failed to prove disproportionality.

The parties stipulated the department of revenue administration's ("DRA") median ratios of 93.4% and 92.0% for tax years 2006 and 2007, respectively, were appropriate indicators of the level of assessment for the two years under appeal.

The Taxpayer argued the assessments were excessive because:

- (1) the Appealed Property is assessed at \$97,452 per acre while the only other two "inside the fence" private facilities at the Lebanon Airport, that also have a lease with the City, are assessed significantly less on a per acre basis;
- (2) one property owned by Lebanon Hangar Associates, Ltd. has an identical lease with the City and yet the leased 4.6 acres are assessed at \$61,522 per acre;
- (3) a second property, owned by Magic Bird Contracting Co., Inc., with a slightly less expansive lease has its 3.25 leased acres assessed at \$30,000 per acre;
- (4) a provision of the Taxpayer's lease and operating agreement ("Agreement") (Taxpayer Exhibit No. 1) precludes the City from providing any other similar operator at the Lebanon Airport with rates and terms that are more favorable than those provided by the Agreement to the Taxpayer; and
- (5) because the Taxpayer's leasehold interest is assessed higher on a per acre basis than the other two entities with similar leasehold interests at the airport, the Taxpayer is disproportionately assessed.

At the conclusion of the Taxpayer's presentation, the City moved to have the appeals dismissed on the basis the Taxpayer had not carried its burden of proof in presenting any market evidence of the Taxpayer's entire estate, including the Appealed and Nonappealed Properties.

After a recess, the board verbally granted the City's motion and dismissed the appeals. This Decision memorializes the board's basis for granting the dismissal.

Board's Rulings

The foundation for taxation in New Hampshire is found in Part I, Article 12 and Part II, Article 5 of the New Hampshire Constitution that require every member of society contribute their share in support of government and that taxes levied to do so must be "proportional and reasonable." RSA 75:1 establishes the basis for achieving proportional assessment is market value. Consequently, for taxpayers to carry their burden, they must present market value evidence to support their claim of disproportionate/over assessment. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003); and Appeal of Sokolow, 137 N.H. 642, 643 (1993).

The first basis for granting the City's motion is the Taxpayer presented no evidence of market value. The Taxpayer's sole basis of appeal was the disparity of the assessments of the leasehold interest of the three taxpayers with land leases at the Lebanon Airport. In fact, upon questioning, Mr. Gregory Soho of Signal Aviation Services, Inc. did not have an opinion as to which value per acre was properly reflective of market value for the Appealed Property. While appreciating the logical appeal of the Taxpayer's argument, without any evidence of market value, the Taxpayer was unable to carry its burden to show its assessment was disproportionate. Without any market value evidence presented, it is not possible to determine whether the Taxpayer is overassessed or whether the Lebanon Hangar Associate and Magic Bird Contractor, Inc. properties are underassessed or some of both. See Appeal of Cannata, 129 N.H. 399, 401 (1987) (the underassessment of other properties does not prove the overassessment of the appealed property).

The Taxpayer also asserted section 3 M.(2) of its lease agreement with the City prohibited the City from assessing the two other similarly situated properties on a different per acre basis as it would result in “rates [or] terms of conditions...” more favorable to the Taxpayer’s competitors. The board agrees with the City that it is not within the board’s jurisdiction (see RSA 71-B:5 generally and RSA 76:16-a specifically) to be the adjudicator of contractual disputes between the parties. Moreover, any such contractual agreement does not supersede the constitutional and statutory provisions that the City and the board, on appeal, must follow to ensure that proportionality of assessments are determined by their relationship to market value and the level of assessment within the municipality. N.H. Constitution Pt. II, Art. 5 (assessments must be proportional and reasonable) and RSA 75:1 (assessments must be based on market value). In other words, municipalities must always assess relative to market value (unless the statute provides otherwise such as current use assessment, etc.) and not be bound by any contractual restriction unless provided for by statute (see e.g. RSA 79-C, discretionary easements; RSA 79-D discretionary preservation easements).

The second basis for granting the City’s motion is that the Taxpayer appealed only the assessment of the leasehold portion of one of the three properties of its entire estate. As the parties stipulated, the assessments of the Taxpayer’s entire taxable estate (Appealed Property and Nonappealed Properties) totaled \$2,204,100, of which the appealed portion of the leasehold value of \$868,300 comprises 39%. As quoted below, Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) requires the board consider the taxpayer’s entire estate when determining whether an abatement is warranted on the appealed portion of the estate.

When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate

valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. *Bemis &c. Bag Co. v. Claremont*, 98 N.H. 446, 449, 102 A.2d 512, 516 (1954). “Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.” *Amoskeag Mfg. Co. v. Manchester*, 70 N.H. 200, 205, 46 A. 470, 473 (1899) (citations omitted).

Even if a taxpayer wishes to challenge only one component of the assessment of its overall estate, the taxpayer still has the burden of proving the aggregate value of his or her entire estate is disproportional in order to obtain an abatement. *Appeal of Walsh*, 156 N.H. 347, 356 (2007). As noted earlier, the Taxpayer’s sole argument was relative to the magnitude of its leasehold assessment value relative to the assessments of other leasehold assessments of similar property at the Lebanon Airport. Consequently, even if the board were to find (which it does not for the reasons stated in the prior section) the leasehold portion of the Taxpayer’s assessment was excessive, the Taxpayer still has the burden to show the aggregate value of the Appealed Property and the Nonappealed Properties were disproportionately assessed. The Taxpayer, however, presented no market value evidence of any of its properties.

While not having carried its burden, the board acknowledges, however, the Taxpayer’s concern of the disparity of the assessments is not an unreasonable one. The board did inquire of the City’s assessor, Mr. David McMullen as to the basis of the methodology of the leasehold assessments and he responded he did not know because it was done by another assessor prior to his employment with the City. However, Mr. McMullen testified that during either the City’s cyclical review of properties (20% per year) or the scheduled 2011 assessment update, the City will review the assessments of these uniquely situated properties at the Airport to be compliant with RSA 75:8-a. In keeping with the board’s broad authority under RSA 71-B:16 to order

reassessments or other remedial actions when it determines municipalities are not equitably assessing property, the board encourages the City to familiarize itself with the rights (both leasehold and fee simple) of these three taxpayers at the Lebanon Airport (and any others that may exist that were not identified at hearing) and document the valuation bases as required by RSA 21-J:14-b, I(c) to assist future assessing officials and the public in understanding the basis and market derivation of the assessments.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Stephen P. Girdwood, Esq., Stebbins Bradley Harvey Miller & Brooks, PA, 41 South Park Street Hanover, NH 03755, counsel for the Taxpayer; Chairman, Board of Assessors, City of Lebanon, 51 North Park Street, Lebanon, NH 03766; and Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the City.

Date: August 3, 2009

Melanie J. Ekstrom, Deputy Clerk