

NH Ball Bearings, Inc.

v.

City of Laconia

Docket Nos.: 23243-06PT/23808-07PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2006 assessment of \$5,038,900 (land \$820,100; building \$4,218,800) and 2007 assessment of \$4,986,300 (land \$820,100; building \$4,166,200) on Map 376/Lot 324-3, a manufacturing facility consisting of 147,825 square feet on 15.47 acres (the “Property”). (The Taxpayer also owns, but is not appealing, an assessment of \$284,300 on another property, a residential condominium (Unit #7 at 1480 Old N. Main Street), which the parties stipulated was proportionally assessed.) For the reasons stated below, the appeals for abatement are granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

- (1) the Property is a single tenant, single story manufacturing plant, originally built in 1967 with subsequent improvements, on land zoned industrial;
- (2) the Property is well maintained for its age in an average location in a fully developed industrial park;
- (3) the analysis contained in Taxpayer Exhibit No. 3 (the Taxpayer's Prehearing Statement) relies primarily on the comparable sales approach (using 11 industrial properties), using the income approach as a check, and estimates the market value of the Property was \$3,300,000 in each year (reflecting a stable market in those years); and
- (4) this value adjusted by the level of assessment in each year results in substantial abatements to the assessments under appeal.

The City argued the assessments should be abated, but only to the extent reflected by its own appraisal (discussed below), because:

- (1) the Property is very well maintained (as reflected in the interior and exterior photographs in Municipality Exhibit A) and has been owner-occupied for a long time, with additional improvements over the years that have not created any functional obsolescence;
- (2) the City's expert prepared a "retrospective real estate appraisal" (contained in Municipality Exhibit A) which estimates a reconciled market value of \$4,600,000 for each tax year using the income approach; and
- (3) the assessments should be abated, but only to \$4,526,400 in 2006 and \$4,425,200 in 2007 (using this market value adjusted by the level of assessment in each year).

The parties stipulated the levels of assessment in tax years 2006 and 2007 were 98.4% and 96.2%, respectively, the median ratios computed by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the assessments on the Property should be abated to \$3,788,400 for tax year 2006 and \$3,703,700 for tax year 2007, based on a market value finding of \$3,850,000 (rounded) adjusted by the agreed-upon level of assessment for each year mentioned above. The appeals are therefore granted.

This market value finding results from considering and weighing all of the evidence, including the analyses and testimony of the Taxpayer's representative (Christopher D. Snow) and the City's expert (Andrew LeMay), respectively, and by 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 must employ its statutorily countenanced ability to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). 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., Appeal of Public Serv. Co. of New Hampshire, 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).

In making their respective market value estimates, the City emphasized the income approach, but also referred to two sale properties, and the Taxpayer placed primary reliance on

the sales comparison approach, showing comparative prices per square foot based on 11 properties, but also presented an income approach. For a property of this type in the relevant time frame, the board finds the sales comparison approach provides a more reliable indicator of value, especially because the market data presented by the parties indicates there was a surplus of vacant industrial buildings available for purchase or lease and that properties were more likely to be marketed based on sales comparisons (on a price per square foot basis) than an income approach. The size of the building (147,825 square feet) makes it more likely to be owner-occupied rather than leased and it is difficult to find comparable properties of this size that are purchased by investors based on the projected income stream resulting from leasing such properties to users. In a different economic environment, when supply and demand factors are more in balance and investor interest in ownership of a property of this type is more robust, the income approach may be more applicable.

Although placing primary weight on the sales comparison approach, the board finds the Taxpayer's estimated market value (based on a price per square foot of "approximately" \$22 using this approach) is too low and that an estimate of \$26 per square foot is more supportable and reasonable, leading to the market value finding of \$3,850,000. The board's estimate is based on considering the positive factors associated with the Property, such as its good condition, functional configuration and good access, while also recognizing its less desirable features such as its large size, lower than optimal ceiling heights (16 – 18 feet) and average location. One of the Taxpayer's 11 comparables is a somewhat larger building (Aavid Engineering - 195,360 square feet on 19.7 acres) in the same industrial park that is now being offered at \$26 per square foot and its other comparables fall within a range bracketing this price, especially when size, location, time of sale and other variables are also considered.

On the other hand, the City's market value estimate of \$4.6 million is too high because it implies a price per square foot of over \$31, which is higher than the range of prices for the two sales it presented, even if the special circumstances pertaining to each are ignored and the prices are accepted at face value. The City's presentation failed to discredit any of the Taxpayer's comparable sales and the City's presentation, in several instances, actually supported a higher indicated sales price per square foot than those used in the Taxpayer's sales analysis grid in Taxpayer Exhibit No. 3.

Overall, the board finds the Taxpayer's sales and listings contained in this exhibit provide a good indication of the market value range of comparable properties. Mr. Snow testified he had contacted, in most instances, at least one party to the sale to ascertain whether it was an arm's-length transaction, in addition to verifying information with the municipal assessors involved.

The board also employed the income approach, modifying several assumptions used by the parties based on the evidence presented, as a further check on the reasonableness of its market value finding. More specifically, the board calculated an estimated value of \$3,823,000 (rounded) using the income approach, with a \$3.75 rent per square foot (applied to the agreed 147,825 square feet of space), a vacancy factor of 14% (which would include any allowance for collection and leasing costs), the City's expense estimate (totaling approximately 11.8% of effective gross income) and an 11% capitalization rate. This estimate is reasonably close to the market value finding of \$3,850,000 using the sales comparison approach.

If the taxes have been paid, the amount paid on the values in excess of \$3,788,400 in tax year 2006 and \$3,703,700 in tax year 2007 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use

the ordered assessment of \$3,703,700 for tax year 2007 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

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: Christopher Snow, Property Tax Advisors, Inc., 16 Pierce Street, Suite 3, Dover, NH 03820, representative for the Taxpayer; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: March 25, 2009

Anne M. Stelmach, Clerk