

KSH Realty LLC

v.

Town of Milford

Docket Nos.: 23348-06PT/23632-07PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 and 2007 assessments of \$2,940,800 (land \$589,700; building \$2,351,100) on Map 6/Lot 42-7, a light industrial building on 8.81 acres (the “Property”). For the reasons stated below, the appeals for abatement are denied.

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 Taxpayer argued the assessments were excessive because:

- (1) an assessment analysis (Taxpayer Exhibit No. 1) prepared by Steven M. Poole, the Taxpayer's representative, estimated the Property's market value to be \$2,400,000 for tax years 2006 and 2007 based on the income approach to value;
- (2) the estimated market value included a value of \$300,000 for the Property's excess land; and
- (3) the Property is located in an area with significant traffic lights along Route 101 which is a deterrent for industrial users.

The Town argued the assessments were proper because:

- (1) an appraisal report (Municipality Exhibit A) prepared by B. Alec Jones of Freneau Appraisal, Inc. (the "Jones Appraisal") estimated the market value to be \$2,900,000 as of April 1, 2006 and April 1, 2007;
- (2) the Property is located in a modern industrial park off the Route 101 bypass; and
- (3) the highest and best use of the Property is for continued office/manufacturing/warehousing use with considerable excess acreage available to support future building expansion.

The parties stipulated to the median levels of assessment of 98.6% for 2006 and 100.0% for 2007 as determined by the department of revenue administration ("DRA").

Board's Rulings

For the following reasons, the board finds the Taxpayer failed to carry its burden of proof in showing it was disproportionately assessed.

At the onset of the hearing, the Town verbally made a motion to exclude (the "Motion") the appraisal report and testimony of Jonathan Frank of F&M Appraisal, LLC (the "Frank Appraisal"). When filing the appeals on behalf of the Taxpayer, Mr. Poole submitted an "Assessment Analysis" he prepared in arriving at the Property's market value utilizing solely the

income approach. Mr. Poole never stated as a ground for the appeals his intention to prepare any other analysis or use an appraisal based on any other approach to value. Further, the Frank Appraisal did not utilize the income approach in arriving at its value conclusion. The board's rule, Tax 203.03(d)(g), requires the Taxpayer's appeal detail its arguments with sufficient specificity and states the Taxpayer is limited to the arguments raised in the appeal.

(d) The taxpayer's appeal document shall state the grounds for the appeal with sufficient specificity to allow the board and the municipality to understand the taxpayer's arguments and to allow the municipality the opportunity to further review and address the taxpayer's arguments.

...

(g) Throughout the appeal, the issues raised by the taxpayer in the abatement application and appeal document may differ, but the grounds stated in the appeal document shall control the issues before the board.

This rule was a revision to the board's 1993 Administrative Rules intended to focus a taxpayer's issues in order to permit the municipality to be fully aware of the taxpayer's arguments before the hearing and to create some finality to the extent of the taxpayer's arguments. See also Tax 202.02(d) ("[t]hroughout the appeal, the taxpayer shall be limited to the grounds stated in the appeal document. The board, on its own or by municipality's motion, shall limit the taxpayer's presentation to the issues raised in the appeal."); Kellop Development, LLC v. Town of Raymond, Docket Nos. 23021-06PT and 23636-07PT (March 5, 2009) (taxpayer's request for additional time to submit an appraisal denied because "it is contrary to the provisions of Tax 203.03(g), which limits each taxpayer to the grounds stated in the appeal document."); Colley/McCoy Management Co. LLC v. Town of Pelham, Docket Nos. 20363-03PT and 21399-04PT (June 23, 2006) (board could have found taxpayer's arguments at hearing were not compliant with rule as "the grounds stated in the appeal document shall control the issues before the board."); Lowell Terrace Associates v. City of Manchester, Docket No. 19124-01PT

(June 23, 2004) (income approach calculations should have been barred as they were not submitted as part of the original grounds for appeal); and Robert and Rosemarie Auger, et al. v. Town of Goffstown, Docket Nos. 14101-93PT, et al. (May 29, 1996) (size adjustment argument should not be admissible as evidence in appeals because it was not contained in the taxpayers' appeal arguments). Because the Taxpayer did not indicate it would be submitting an appraisal to support the overassessment of the Property but merely relied on an income approach in its appeal documents, and because the Frank Appraisal did not consider the income approach in arriving at the market value of the Property, the Motion was granted. The Taxpayer was therefore excluded from submitting the Frank Appraisal into evidence and was limited to the evidence submitted in the appeal documents.

Based on the Assessment Analysis submitted with the appeals, Mr. Poole testified the most substantial difference between his analysis and the Town's income capitalization approach in Municipality Exhibit A is his estimate of 10% for vacancy and credit loss versus Mr. Jones estimate of 5%. Mr. Poole submitted a summary of seven New Hampshire improved property rents and 10 improved asking rents. He indicated he selected two of the rental comparables in his analysis (Londonderry and Hooksett) and, based on the range of \$3.00 to \$6.00 per square foot in asking rent, "chose" \$5.00 per square foot. After adjusting 10% for vacancy and credit loss and expenses, he arrived at a net operating income of \$205,076. A capitalization rate of 9.80% was utilized indicating a value of \$2,100,000. To this value, he added an estimate of \$300,000 (based on \$75,000 per acre) for the excess land for a final indicated value of the Property of \$2,400,000. Mr. Poole testified the indicated \$47.00 (rounded) per square foot value was very reasonable given the Property's location in Milford in an area where significant traffic lights are a deterrent for industrial users. He further testified an adjustment should be made

because of its location which is not proximate to the airport, an important factor for industrial properties.

The Town submitted the Jones Appraisal along with the testimony of its preparer. Mr. Jones testified the Property is located in a modern industrial park located off the Route 101 bypass in Town. The Property is improved with an above average quality 52,247 square foot industrial building and has 8.81 acres of land resulting from the merger and consolidation of two lots in 2005. As a result, the Property's assessment includes 4.0 ± acres developed with the industrial building and considerable excess land (approximately 4.73 acres) for future expansion. All three approaches to value were analyzed to arrive at an indicated market value. The cost approach yielded an indicated market value of \$3,400,000 as of April 1, 2006 which included an estimated land value of \$700,000 arrived at through a comparative analysis of six land sales. Mr. Jones also prepared a sales comparison approach in which he utilized 6 comparable sales and adjusted them for differences in location, building size, quality and condition. He further adjusted the comparables based on the Property's excess acreage, given the fact that considerable site engineering had already been completed. Mr. Jones arrived at an indicated value by the sales comparison approach of \$1,925,000 as of April 1, 2006. Last, Mr. Jones prepared an income approach to value. He analyzed 18 recent leases and determined a market rent as of April 1, 2006 of \$5.25 per square foot for a potential gross income of \$274,297. An estimated 5% vacancy and credit loss was utilized based on the "low industrial vacancy rate in Milford" which yielded an effective gross income of \$160,582. Operating expenses of: 3% for property management, \$0.20 per square foot for reserve for replacement and 3% miscellaneous were deducted arriving at a net operating income of \$134,498. The Jones Appraisal utilized three sources of market data in arriving at a 9.5% capitalization rate which indicated a total of

\$2,445,000 to which the contributory value of the excess land (\$315,000) was added yielding an indicated value by the income approach of \$2,760,000. Mr. Jones reconciled the three approaches to value and determined the most logical purchaser of the Property would be an owner/occupier and his final estimate of value as of April 1, 2006 was \$2,900,000. He further indicated he analyzed the data as of April 1, 2007 and found “no noticeable appreciation in sale prices or lease rates” to be indicated and therefore arrived at the same value as of April 1, 2007.

While there are three approaches to value, not all three approaches are of equal import in every situation. Id. at 50; International Association of Assessing Officers, Property Appraisal and Assessment Administration, Ch. 4, p. 108 (1990). In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal reviewing the valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979). Given the evidence in this appeal, we concur with the Jones Appraisal that the sales comparison (market) approach is the most appropriate approach to value the Property as, in all likelihood, the purchaser of the Property would be an owner/occupier who would also consider the contributory value of the excess acreage. The Jones Appraisal thoroughly analyzed the Property and all these approaches to value and determined the quality and quantity of evidence available supported a market value of \$2,900,000.

As stated above, the parties stipulated to the DRA’s equalization ratios for tax years 2006 and 2007 of 98.6% and 100.0% respectively. The board finds no adjustment to the assessment for tax year 2006 is proper given the difference between the market value finding and the equalized assessed value is less than 3%. In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation.

See RSA 71-B:1; see also RSA 541-A:33, VI. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Steven M. Poole, Extax Consulting Group, LLC, 200 Broadway - Suite 302, Lynnfield, MA 01940, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Milford, 1 Union Square, Milford, NH 03055.

Date: August 11, 2009

Melanie J. Ekstrom, Deputy Clerk