

Benning Street, LLC

v.

City of Lebanon

Docket No. 24657-08PT

ORDER

The board has reviewed the “Taxpayer’s” January 9, 2012 Motion for Reconsideration (“Motion”) of the board’s December 9, 2011 Decision granting a tax abatement on the “Property” (a manufacturing plant consisting of 157,204 square feet in five interconnected buildings on 10.19 acres of land) for tax year 2008, finding the Property had been disproportionately assessed. The “City” filed an “Objection” to the Motion on January 20, 2012.

The suspension Order issued on January 13, 2012 is hereby dissolved and the Motion is denied for the reasons noted below. (See also the Objection, ¶¶ 1 – 6, which presents additional points and authorities for denial of the Motion.)

First, the board did not conclude the market value of the Property as of the assessment date (April 1, 2008) was \$5,350,000, a value reflecting a price per square foot of \$34 (the estimate in the “Walker Report” prepared by the board’s review appraiser, which was one dollar less than the \$35 per square foot estimated by the Taxpayer’s representative; see Decision, pp. 2 and 7). Rather, the board found a higher market value for the Property (\$6.8 million) because the

evidence, considered as a whole, supported a value of \$43 per square foot and granted a tax abatement based on this value, which the City does not dispute. (Objection, ¶ 6.)

Second, these findings in the Decision did not result simply from “speculative, alternative” assumptions regarding zoning or other issues, as asserted in the Motion (paragraphs 13 and 23). Rather, the board recognized “all relevant factors affecting market value must be considered,” citing Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975), and applied its “‘experience, technical competence and specialized knowledge’ to the evidence presented. See RSA 71-B:1.” (Decision, pp. 5-6; see also Objection, ¶2.) In other words, the board did not engage in unwarranted speculation but instead considered all relevant factors and further noted the \$6.8 million market value estimate correlated to the “\$6.7 million purchase price” paid by the Taxpayer. (Decision, p. 8.)

Substantial testimony and other evidence was presented at the two hearings regarding whether or not the market value of the Property as a manufacturing facility declined or remained stable, as reflected in state and local economic and market conditions about which the parties did not agree. The board reviewed all of this disputed evidence before concluding the location of the Property (“proximity to a major commercial corridor” in the City) is very likely a value-enhancing factor that would offset any negative influence on the demand for a manufacturing facility of the size of the Property. (Decision, pp. 9-11.) None of the legal authorities cited in the Motion diminish the validity of these findings or the board’s approach to determining what was a proportional assessment for the Property.

In brief, the board finds the Motion does not meet the “good reason” standard for granting it prescribed by the statute and incorporated in the board’s rules. See RSA 541:3; and Tax 201.37. The Motion is therefore denied.

Any appeal of the Decision must be by petition to the supreme court filed within 30 days of the Clerk's date shown below, with a copy provided to the board in accordance with Supreme Court Rule 10(7). RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Paul J. Alfano, Esq., Alfano Law Office, PLLC, 4 Park Street, Concord, NH 03301, Counsel for the Taxpayer; Shawn M. Tanguay, Gardner Fulton & Waugh P.L.L.C., 78 Bank Street, Lebanon, NH 03766, Counsel for the City; and Chairman, Board of Assessors, 51 North Park Street, Lebanon, NH 03766.

Date: February 9, 2012

Anne M. Stelmach, Clerk