

Pioneer Aviation, LLC

v.

City of Portsmouth

Docket No.: 25671-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2010 assessment of \$4,647,800 on Map 0311/Lot 0004-0000, 125 Aviation Avenue, a light industrial building owned by the Taxpayer located on 10 acres of leased land (collectively, the “Property”) at the Pease International Tradeport. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment on the Property 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 board finds the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) a summary appraisal report prepared by Michael J. Farinola (the “Farinola Appraisal,” Taxpayer Exhibit No. 1) estimated a market value of \$4 million as of November 16, 2009;

- (2) Mr. Farinola's opinion (\$4 million) is the best evidence of the market value of the Property and is supported by the photographs, comparable sales and other information presented (see, e.g., Taxpayer Exhibit Nos. 2-4 and 7-14¹); and
- (3) the assessment on the Property in tax year 2010 should be abated to \$4 million adjusted by the level of assessment in the City.

The City argued the assessment was proper because:

- (1) the Taxpayer's evidence, including the Farinola Appraisal, fails to support an abatement because this evidence ignores the provisions of RSA 12-G:14 (set forth in Municipality Exhibit A), which obligate the City to assess the Property, located within the Pease International Tradeport, "as though such property were not owned by the exempt entity and were held in fee simple" (including the value of the land leased from the Pease Development Authority, as well as the building owned by the Taxpayer);
- (2) the Farinola Appraisal is flawed and understates the value subject to assessment by not estimating the fee simple value of the Property; and
- (3) the City assessed the Property proportionally, as reflected in the supporting documentation included as part of Municipality Exhibit A, and the Taxpayer failed to meet its burden of proving disproportionality.

The parties agreed the level of assessment in the City in tax year 2010 was 98.1%, the median ratio calculated by the department of revenue administration.

¹ After hearing oral arguments at the August 8, 2012 hearing on the City's "Motion to Exclude Summary of Various Land Use Approaches" and the Taxpayer's "Response," the board denied the motion.

Board's Rulings

Based on the evidence presented and the applicable law, the board finds the Taxpayer failed to prove the Property was disproportionally assessed for tax year 2010. The appeal is therefore denied.

The board finds merit in the City's arguments that the provisions of RSA 12-G:14 are controlling because of several undisputed facts. The Property is located at the Pease International Tradeport. The Taxpayer owns the building on the Property and has possession of the land under a long-term ground lease from the Pease Development Authority. The statute (RSA 12-G:14) requires the City to assess the "fee simple" interest in the Property even though it is on leased land. The Farinola Appraisal fails to address and appropriately account for these key facts and the effect of this statute.

In his appraisal, Mr. Farinola employed the three accepted appraisal approaches,² but used them to estimate what resembles a "leasehold" value more than the fee simple value of the Property. The term "fee simple" is defined as "absolute ownership unencumbered by any other interest or estate."³

The board reviewed the Farinola Appraisal in detail and finds he did not attempt to estimate fee simple value. In his sales comparison approach, Mr. Farinola adjusted each "fee simple" comparable in his sales grid for this supposed difference with the property rights he was valuing. (See Farinola Appraisal, Part III, p. 11.) In his income approach, he deducted the

² There are three accepted approaches to value: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate, Ch. 7, p. 130 (13th ed. 2008). While there are three approaches to value, not all three approaches are of equal import in every situation. Id. at 141; 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).

³ The Appraisal of Real Estate, p. 7.

annual “Land Lease” payment as an expense. (Id., p. 18.) In his cost approach, he made no attempt to estimate the value of the land. (Id., p. 24.⁴) The result of treating the contributory value of the land inconsistently in the three approaches to value lessens the weight the board could place on the Farinola Appraisal.

More importantly, in none of his approaches did Mr. Farinola attempt to include the value of the land, which means his approach leads to an estimated value in conflict with the controlling statute (RSA 12-G:14). Mr. Farinola did not attend the hearing and was therefore not available to answer questions regarding why he chose to follow these steps without considering the effect of the statute. For all of these reasons, the board could not give his opinion of value any weight.

The board need not dwell further on the Farinola Appraisal or the Taxpayer’s remaining evidence. It is clear from the evidence presented his opinion does not embody the fee simple value of the building and the land considered as a whole. The Taxpayer failed to present any evidence that would allow the board to conclude adding a reasonable estimate of the contributory value for the 10 acres of land would not result in a fee simple value for the Property that would not equal or exceed the equalized value of the City’s assessment. (\$4,737,800, rounded: \$4,647,800 assessed value divided by 98.1% level of assessment.) Consequently, the board finds the Taxpayer failed to meet its burden of proving disproportionality.

The board has heard and decided prior appeals involving property located in the Pease Tradeport. See, e.g., Resport LLC v. City of Portsmouth, BTLA Docket No. 23195-06PT (July 2, 2009). In that decision, the board considered the relevant statutes and “[g]ranted” a request

⁴ As stated in the Farinola Appraisal (Id., p. 24): “Since the subject is constructed on leased land, no land value will be added to the subject’s value.” The board finds this failure to account for the land value leads to an erroneous conclusion regarding the market value of the Property for property tax (ad valorem) purposes.

for a relevant finding, framed as follows:

Although the land on which the subject building has been constructed is leased by [the t]axpayer from the Pease Development Authority, pursuant to RSA 12-G:14 (II) the property..., “shall be taxable by the municipality in which the property is located as though such property were not owned by [an] exempt entity and were held in fee simple.”

The City did not err in assessing the Property on a fee simple basis (including the land value as well as the building value).

The legislature created the Pease Development Authority for a special purpose and provided for a specific statutory framework for the assessment and taxation for those businesses and individuals who operate within the Pease International Tradeport. Cf. Appeal of City of Portsmouth, 151 N.H. 170, 171 and 174 (2004).⁵ To the extent the Taxpayer’s representative believes this statutory framework is “unfair,” those arguments should be addressed to the legislature.

For all of these reasons, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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

⁵ As noted in that supreme court decision:

The New Hampshire legislature established the PDA to convert and redevelop the former Pease Air Force Base, which is located in Portsmouth and the towns of Newington and Greenland, “for the benefit of the affected communities, the seacoast region, and the state.” RSA 12-G:1, III (2003); *see* RSA ch. 12-G (Supp. 2003). The federal government transferred title of Pease Air Force Base to the PDA pursuant to the Federal Surplus Property Act of 1944. *See* RSA 12-G:2, I(a); *see also* 49 U.S.C. § 47107 (2003). RSA 12-G:14 creates the State and local taxation obligations and accounts for the provision of services to the PDA’s property, which includes the airport district, property within the boundaries of Pease Air Force Base but outside of the airport district, property formerly held by the New Hampshire State port authority, and property acquired by the PDA pursuant to RSA 12-G:39. *See* RSA 12-G:14.

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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Albert F. Shamash, Esq., Member

Theresa M. Walker, 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., 56 Middle Street, Portsmouth, NH 03801, Representative for the Taxpayer; and Chairman, Board of Assessors, City of Portsmouth, 1 Junkins Avenue, Portsmouth, NH 03801.

Date: December 7, 2012

Anne M. Stelmach, Clerk