

High Liner Foods, Inc.

v.

City of Portsmouth

Docket No.: 25790-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2010 assessment of \$7,434,400 (land \$2,745,400; building \$4,689,000) on Map 0259/Lot 0014/0000, an industrial building on 15.25 acres at 1 Highliner Avenue (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment 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 carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property consists of a single-story building (190,574 square feet) on 15.25 acres in an industrial zone and the highest and best use is its current use as an industrial plant;

(2) the building has three freezer areas (cold storage space used to store seafood), as well as warehouse and office space, and the freezer areas are the “heart of the Property”;

(3) a “Market Analysis” prepared by Christopher Snow of Property Tax Advisors Incorporated (in Tab 2 of Taxpayer Exhibit No. 2) employs both the sales comparison and income approaches to value the Property and estimates a market value of \$5.25 million as of the assessment date, April 1, 2010; and

(4) the assessment should be abated to \$5.25 million adjusted by the level of assessment.

The City argued the assessment was proper because:

(1) the City obtained an appraisal from Stephen G. Traub, ASA, of Property Valuation Advisors (the “Traub Appraisal,” Municipality Exhibit B), which estimates the market value of the Property was \$7,250,000 as of the April 1, 2010 assessment date (which is reasonably supportive of the proportionality of the assessment);

(2) unlike Mr. Snow, who is a real estate broker and tax representative, not an appraiser or an assessor, Mr. Traub is a Certified Senior Real Property Appraiser (who prepared his appraisal in conformity with “USPAP,” the Uniform Standards of Professional Appraisal Practice) and the Traub Appraisal is more credible than the Market Analysis prepared by Mr. Snow;

(3) Mr. Snow’s adjustments on his sales grid (such as for “Location,” “Building Size,” “Building Quality/Condition” and “Site Size”; see Market Analysis, p. 21) are not well supported and are not consistent and the properties he chose are not truly comparable to the Property;

(4) in his income approach, Mr. Snow used a very high “vacancy and collection loss” rate (17%; see Market Analysis, p. 73), compared to the 10% used by the City (see Traub Appraisal, p. 39) which is more supported by market data and Mr. Snow also made expense and capitalization rate assumptions that are not well explained or supported in his Market Analysis (pp. 72-73); and

(5) the appeal should be denied.

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

Board's Rulings

Based on the evidence, the board finds the Taxpayer met its burden of proving disproportionality and the assessment should be abated to \$6,744,000, rounded (based upon a \$6,875,000 market value estimate adjusted by the 98.1% level of assessment). The appeal is therefore granted for the following reasons.

As the parties recognize, assessments must be based on the Property's market value adjusted by the level of assessment in the municipality. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In determining what is a proportional assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). When making market value findings, the board applies its "experience, technical competence and specialized knowledge" to the evidence presented. 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 has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). Further, in making findings where there is conflicting evidence, "judgment is the touchstone." See Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras, 115 N.H. at 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Property is a “one-story, cold storage food-processing industrial warehouse facility of about 190,574 SF” and has been owner-occupied “for many years.” (Traub Appraisal, p. 26.) The Property has an excellent location in the City with “extremely rare, 180 degree, unobstructed visibility from I-95.” (Id., p. 25.) The building improvements are described as being in “average to good condition with recent upgrades and renovations” reflected in “permits taken out for about \$900,000” in 2009 and 2010. (Id., p. 26.)

The parties agree the highest and best use of the Property is “continued industrial use” (id., p. 28; and Market Analysis, p. 4), but disagree regarding the market value of the Property as of the assessment date. The Taxpayer’s estimate developed by Mr. Snow is \$2 million lower than the City’s estimate developed by Mr. Traub: \$5.25 million compared to \$7.25 million. In other words, on a per square foot basis, using 190,574 square feet as the building size, Mr. Snow valued the Property at \$27.55 per square foot and Mr. Traub valued the Property at \$38.04 per square foot.

Mr. Snow and Mr. Traub used the same two approaches to value the Property: the sales comparison approach and the income capitalization approach; but not the cost approach. Because these two approaches are better developed and documented in the Traub Appraisal, the board finds the Traub Appraisal is a better starting point for making market value findings.¹

Mr. Traub obtained similar indications of value using the income approach (\$7,270,000) and the sales comparison approach (\$7,240,000) and reconciled these estimates to a value conclusion of \$7.25 million. (Traub Appraisal, pp. 2, 45 and 54.) If accepted at face value, this estimate indicates the Property is slightly overassessed. (\$7.25 million x 98.1% level of

¹ The City further argued Mr. Traub is a professional appraiser subject to USPAP standards and was obligated to make an independent estimate of value, whereas Mr. Snow is not a professional appraiser and is not subject to the same standards to assure independence. In response, Mr. Snow referred to his experience as a tax representative and a commercial broker and argued he did have considerable experience valuing commercial and industrial properties.

assessment = \$7,112,250, which is lower than the \$7,434,400 assessment under appeal.) Based on the evidence presented, however, the board finds several additional modifications are needed that reduce Mr. Traub's estimate of value.

With respect to the income approach, the evidence supports a finding that the rental rate should be lower than the \$4.75 per square foot estimated by Mr. Traub. The highest rent comparison in the Traub Appraisal (see pp. 32 and 34) is for a newer building (72 Pease Boulevard) with more office space. The Pease location is likely to be more highly valued in the market and, perhaps reflecting this and other factors, this comparable has an indicated rental rate (\$7.10 per square foot) significantly higher than the other four comparables (\$3.15, \$3.38, \$3.55 and \$4.75 per square foot) in the Traub Appraisal. The board therefore finds a lower rental rate of \$4.50 per square foot is more reasonably supported by the evidence presented.

The parties also disagreed about the appropriate vacancy and collection deduction from potential gross income. The board finds the 10% estimated by Mr. Traub is better supported than the 17% used by Mr. Snow.² Similarly, the board finds Mr. Traub's expense estimates (calculated as 13.53% of effective gross income) are more credible than the 16% of effective gross income estimate applied by Mr. Snow.

A final area of disagreement in applying the income approach was the choice of an appropriate capitalization rate. Mr. Snow's Market Analysis (p. 73) devotes only one paragraph to explaining or supporting his choice of a simple 11% capitalization rate, whereas Mr. Traub calculated a tax adjusted capitalization rate of 9.685% using standard appraisal techniques that were much better documented. (Traub Appraisal, pp. 40-45.)

² The Property has been owner occupied for many years and it is likely that a prospective purchaser would also be a relatively stable and substantial business with a long term need for the large amount of freezer space. In addition, the evidence indicates the actual vacancy rate for a property of this type in the City was lower than the rate estimated in the Market Analysis.

An income approach incorporating these adjustments yields an estimated net operating income of \$667,400, rounded. The capitalized value of this estimate is \$6,891,100, rounded.

Turning to the sales comparison approach, the board finds both parties were limited by the lack of sales sufficiently similar to the Property. Mr. Traub listed five comparables in his appraisal, but only two of the five were “fee simple” market transactions and all needed substantial adjustments as shown on his grid. (Traub Appraisal, p. 53.) Mr. Snow, for his part, presented ten comparables in the Market Analysis (p. 21). He made substantial adjustments to these comparables which the City effectively questioned on cross-examination. On balance, the board finds the market evidence presented, when considered as a whole, reasonably supports an estimated value of about \$6,860,700, rounded (based on \$36 per square foot times 190,574 square feet). Notably, both parties submitted information about only one property actually used as a freezer storage facility (56 Milliken Street, Portland, Maine). Mr. Traub’s adjusted sales price for this comparable is \$35.87 per square foot. (See Traub Appraisal, p. 53; and Taxpayer Exhibit No. 1, Tab 1.) This indication correlates with the \$36 per square foot estimated by the board for the Property.

Taking all relevant factors into consideration, and reconciling these value indications from the income and sales comparison approaches, the board finds an estimated market value of \$6.875 million results in a proportional assessment: adjusting this estimate by the 98.1% level of assessment results in an abated assessment of \$6,744,400, rounded, for tax year 2010.

If the taxes have been paid, the amount paid on the value in excess of \$6,744,400 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 for subsequent years.

RSA 76:17-c, I and II.

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 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

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Certification

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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: August 14, 2013

Anne M. Stelmach, Clerk