

**Pioneer NH, LLC**

**v.**

**City of Portsmouth**

**Docket No.: 25908-10PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2010 assessment of \$5,050,500 on Map 0305/Lot 0003-0000, three office buildings owned by the Taxpayer on 11.55 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 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) the “Appraisal” (Taxpayer Exhibit No. 7) prepared by its tax representative (Christopher Snow of Property Tax Advisors Incorporated) and the other documents presented (Taxpayer

Exhibit Nos. 1 – 6 and 8 – 15) indicate the market value of the Property was \$2.7 million, as stated in the appeal document;

(2) this evidence is the best evidence of the market value of the Property; and

(3) the assessment on the Property in tax year 2010 should be abated to \$2.7 million adjusted by the level of assessment in the City.

The City argued the assessment was proper because:

(1) the Taxpayer's evidence fails to support an abatement because this evidence ignores the provisions of RSA 12-G:14, II (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 buildings owned by the Taxpayer);

(2) the Taxpayer's market value estimate 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. They further agreed the board could take notice of the evidence and arguments presented at the hearing of another appeal held on the same date involving property owned by a related taxpayer, Pioneer Aviation, LLC v. City of Portsmouth, BTLA Docket No. 25671-10PT. The board issued the "Pioneer Aviation" Decision on December 7, 2012.

**Board's Rulings**

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

This appeal is quite similar to Pioneer Aviation and presents the same fundamental issue. The buildings that are the subject of each appeal are owned by related parties and:

The Property is located at the Pease International Tradeport. The Taxpayer owns the building[s] 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.

(Pioneer Aviation, p. 3.) The board finds these undisputed facts determine the outcome of this appeal, as they did in Pioneer Aviation.

The board considered all of the evidence presented by the Taxpayer, including the analysis in Taxpayer Exhibit No. 7 prepared by its tax representative. The board is unable to give this document, which contains disparate information including a "Property Profile," a sales grid and an "Income Analysis" for 2010 stating a "market value estimate" ("\$2,700,000"), any weight for several reasons.

As a preliminary matter, while a tax representative is not precluded from presenting an analysis to estimate market value, he or she is not disinterested in the outcome of the appeal and can be considered an advocate for a tax abatement rather than a truly independent, unbiased third-party expert in appraising property. (Compare Pioneer Aviation, where this tax representative presented the appraisal of an independent professional, one with a presumed degree of independence, rather than his own analysis.)

More importantly, Taxpayer Exhibit No. 7 is not credible because the Income Analysis strips out a very substantial expense: the “PDA [Pease Development Authority] Building Rent” of “\$196,473.” The deduction of this expense effectively removes the value of the land from the valuation and is directly contradictory to RSA 12-G:14, II, which governs how the Property must be assessed for ad valorem tax purposes. Because of this statute, and for the reasons stated in Pioneer Aviation,<sup>1</sup> it is improper to value the Property for assessment purposes without including the market value of the land as well as the buildings.

Excluding this expense deduction from the analysis, even without making any other adjustments, increases the “market value estimate” by over \$2 million (from \$2.7 million to \$4.76 million), making it reasonably proportionate to the assessment under appeal. (\$5,050,000 assessed value divided by 98.1% level of assessment = \$5.15 million indicated market value.<sup>2</sup>)

There is reason to question other unsupported assumptions in the Income Analysis, such as using an estimate of potential gross income that is over 10% less than the reported rental

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<sup>1</sup> See Pioneer Aviation, pp. 4-5:

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 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). [Footnote omitted.] To the extent the Taxpayer’s representative believes this statutory framework is “unfair,” those arguments should be addressed to the legislature.

<sup>2</sup> Applying the level of assessment (98.1%) to this indicated market value results in an assessed value (\$4.67 million) that is within 7.5% of the assessment under appeal.

income for 2010 (“\$605,000” compared to “\$669,113.13”). Modifying this assumption would bring the estimated market value from the Income Analysis even closer to the indicated market value of the assessment under appeal. There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality’s general level of assessment, represents a reasonable measure of the proportional tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

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 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

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Albert F. Shamash, Esq., Member

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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: January 9, 2013

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Anne M. Stelmach, Clerk