

MTS Development Corp.

v.

City of Lebanon

Docket No.: 26031-10PT

ORDER

The board has reviewed the “Taxpayer’s” October 12, 2013 “Motion to Reconsider and Motion for Rehearing” (collectively, the “Motion”) with respect to the September 12, 2013 Decision denying this tax abatement appeal. The suspension Order issued on October 21, 2013 is hereby dissolved. The Motion is denied for the following reasons.

Reconsideration and rehearing motions are governed by the standards set forth in RSA 541:3 and Tax 201.37. They are granted only for “good reason” and require a showing that “the board overlooked or misapprehended the facts or the law and such error affected the board’s decision.” [See, in particular, Tax 201.37(e).] Further, each party is required to “submit all evidence and present all arguments at the hearing” and “rehearing motions shall not be granted to consider evidence previously available to the moving party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing.” Thus, mere disagreement either with the board’s specific findings or its overall conclusion that the Taxpayer

failed to present sufficient evidence to meet its burden of proving disproportionality is not a proper cause to grant the Motion.

The Taxpayer's chief complaint appears to be that the board did not give sufficient weight to an appraisal of the "Property" prepared by Bruce A. Taylor. Mr. Taylor, however, did not attend the hearing to testify and answer questions regarding the many assumptions and questionable conclusions in his appraisal. As noted in the Decision (pp. 4-5), the Taylor Appraisal was prepared as a "leased fee" appraisal.¹ An appraisal for this purpose may yield an estimate that could well be below or above the market value of the Property as of the assessment date depending, in part, on whether the rents used by Mr. Taylor in his appraisal "correspond with market rents." (*Id.*) Mr. Taylor's non-attendance at the hearing left this and other questions unanswered and lessened the credibility of his value estimate.

The Motion (p. 1) now seeks a rehearing to allow "the experts to correct acknowledged errors in their reports." The Taxpayer, however, had the obligation to meet its burden of proving disproportionality at the original hearing, not through a rehearing for the purpose of correcting deficiencies in its own appraisal evidence or that of the "City." If Mr. Taylor had attended the hearing, the City and the board would have had an opportunity to question him regarding any so-called errors as well as his other assumptions and conclusions. A rehearing is not required simply because the Taxpayer neglected to call Mr. Taylor as a witness or question more thoroughly the City's own expert witness, Mr. Andrew LeMay, who did testify at the hearing.

The board further notes it did not place undue reliance on the value estimate (\$1.6 million) in the LeMay Appraisal submitted by the City in order to decide this appeal. Even if, for the sake of Taxpayer's arguments, that estimate is too high due to certain alleged errors in

¹ In this respect, whether or not the City "raised [the] issue" of use of a leased fee appraisal in a prior (2006) appeal (see Motion, p. 1) has no bearing upon the outcome of this appeal.

Mr. LeMay's income and expense estimates, there is a considerable margin for error between his value conclusion and what the market value of the Property would have to be (below approximately \$1.4 million) in order to find the assessment (\$1,374,600) was disproportional for tax year 2010 because of the 97.2% level of assessment. (See Decision, pp. 3-4.)

The board need not dwell on the other assertions and arguments in the Motion other than to note they are at variance with specific findings in the Decision based on a review of all of the evidence presented, not a selective incorporation of items favorable to the Taxpayer. In addition, the board was not required to adopt either appraiser's specific value estimates or, for that matter, to "average" the differences (for the "capitalization rate") or use a "median" (for "operating expenses") between their respective estimates. Again, mere disagreement with the board's findings on the evidence presented is not sufficient to warrant reconsideration or a rehearing.

For these reasons, the Motion is denied.

Pursuant to RSA 541:6, any appeal of the Decision must be by petition filed with the supreme court within thirty (30) days of the date of this Order, 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

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: MTS Development Corp., c/o Richard Balagur, President, 20 West Park Street, Lebanon, NH 03766, Taxpayer; Shawn M. Tanguay, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the City; and Chairman, Board of Assessors, City of Lebanon, 51 North Park Street, Lebanon, NH 03766.

Date: 10/31/13

Anne M. Stelmach, Clerk