Digital Equipment Corporation

v.

Town of Hopkinton

DECISION

Docket Nos. 6444-89 and 8896-90

The "Taxpayer" appeals, pursuant to RSA 162:I:15, the "Town's" 1989 and 1990 assessment of $4,082,550 on a 246,950 square-foot, industrial building on a 57 +/- acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The board began its analysis by considering the parties' approaches to this appeal. The Town focused on the assessment, which was based on a 1981 revaluation. The Town admitted it had not reviewed the Property's assessment and had not performed any market analysis for the appeal since 1981.

The Taxpayer focused on the Property's equalized value -- 1989: $9,720,366 ($4,082,550 divided by 46); and in 1990: $8,505,310 ($4,082,550

divided by 48) -- which was excessive when compared to the Property's fair market value in 1989: $6,500,000; and in 1990: $5,500,000.

The board gave considerable weight to the Taxpayer's evidence because it reflected the Property's 1989 and 1990 value, while the Town's evidence focused on an unadjusted, unreviewed assessment of the largest commercial property in the Town.

We remind the Town that they must annually review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town. RSA 75:8 states:

> The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal ***.

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

Because the Town failed to follow this rule, we gave little weight to the Town's assessment.

The board then turned to the Taxpayer's evidence, giving due consideration to the Town's criticisms of that evidence.

Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body,

must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).
In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value.

The board's initial review was done to establish a range of value based on the evidence. Having questioned the Town's assessment (as equalized), the board concluded the 1989 full-value range was $5 million to $7.2 million and the 1990 full-value range was $4.7 million to $6.2 million. The values within these ranges, and the methodologies used to set the ranges, were then reviewed. We rejected the Taxpayer's income approach for two reasons: (1) the comparable rents were not good comparables; and (2) the income approach is not the best method for valuing these large, owner-occupied, industrial properties. We were then left with the Taxpayer's comparable-sales approach (1989: $7,160,000; 1990: $6,175,000) and cost approach (1989: $5,021,000; 1990: $4,721,000).

The Town questioned the Taxpayer's cost approach, asserting the building cost should be $5,920,701 plus land and site costs. The board has taken the Town's replacement costs less depreciation of $5,920,700 and added $780,000 for the land (Taxpayer's $650,000 x 1.20 for superior location and access) and added $20,000 for paving, $15,000 for septic, $6,000 for the well, and $45,000 for the firepond and

pumps, totalling $6,786,700.

The board rejects the Taxpayer's contention that the paving adds only $3,200 of value to the Property. The Taxpayer's depreciation method for the paving led to undervaluing the paving. The board also rejects the Taxpayer's contention that the fireponds, etc., add no value to the Property. Because not shown otherwise, we assume the Taxpayer's land value was for land not serviced by sufficient water and sewer. Thus, the septic and the fireponds would add value to the land, bringing the land more in line with land served by sufficient municipal water and sewer. The Town estimated the pumps to cost $30,000-$60,000. Unfortunately, the board can only speculate on the value of the ponds. We have chosen $45,000 to simply ensure some value is included, albeit speculatively.

The $6,786,700 cost approach was then compared with the Taxpayer's $7,160,000 comparable-sales approach. The problem with the Taxpayer's comparable-sales approach was the lack of sales of buildings as large as the Property. The closest in size, industrial sale #1, had 161,276 square-feet on 11.2 acres and sold in April 1990 for $6 million. Certainly, this sale establishes the floor, but the Property is larger and has more direct access to a major highway (Rte. 89) that provides access to Boston and New York.

Given all of the evidence, the board concludes the Property's fair market value for 1989 was $7,200,000 and for 1990 was $6,700,000. (As a check and only after calculating these values, the board reviewed the Town's 1991 revaluation figure of $6,497,400.) These values result in assessments of $3,312,000 for 1989 and

$3,216,000 for 1990. This calculation was done with the department of revenue's equalization ratio, which was the only evidence

presented concerning the general level of assessments relative to fair market value.

The board would advise the Town to comply with RSA 75:8 in future years. The board is not unmindful of the costs to the Town to do so, but without such review certain taxpayers end up bearing a disproportionate share of the taxes.

Request for Findings of Fact
1.Granted
2.Granted
3.Granted
4.Granted
5.Granted
6.Denied

Request for Rulings of Law

1.Granted
2.Granted
3.Granted
4.Denied
5.Denied
6.Denied

If the taxes have been paid, the amount paid on the value in excess of 1989: $3,312,000 and 1990: $3,216,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Steven L. Winer, Michael F. Babini, Carol A. Leipner, Representatives for the Taxpayer; and Chairman, Selectmen of Hopkinton.

Dated: April 21, 1992

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Valerie B. Lanigan, Clerk

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Digital Equipment Corporation

v.

Town of Hopkinton

Docket Nos.: 6444-89 and 8896-90

ORDER AND HEARING NOTICE

This is a response to the "Town's" rehearing motion. The board reviewed the transcript and determined the Town was not given an opportunity to summarize. Frankly, the board sees this omission as innocuous error, if error at all, because:
(1)the Town failed, at the hearing, to object or ask for summation;
(2)the Town made its position known at the hearing; and
(3)the Town's lack of any case other than cross examining the Taxpayer's expert.
Nonetheless, the board wants to ensure the Town's claim of procedural error is addressed and eliminated.

Therefore, a hearing will be held on June 8, 1992 at 2:00 p.m. to allow the Town an opportunity to summarize its position and to then allow the Taxpayer's a rebuttal summary. The Town's summary will be strictly limited to a summation as if presented at the original hearing before decision. The Taxpayer will than be given an opportunity for rebuttal summary subject to the same limitation. Pending this hearing, the board's April 21, 1992 decision is stayed. After the hearing the board will issue a decision.

The Town obviously thinks its summation is important enough to warrant a

rehearing. We assume it has something significant to say and hope this rehearing bears this out. If the rehearing is frivolous, the board will entertain the Taxpayer's motion for costs and fees incurred in attending the rehearing.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the foregoing order have been mailed this date, postage prepaid, to Steven L. Winer, Michael F. Babini, Carol A. Leipner, Representatives for the Taxpayer; and Chairman, Selectmen of Hopkinton.

Dated:
Valerie B. Lanigan, Clerk

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Digital Equipment Corporation

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Town of Hopkinton

Docket Nos. 6444-89 and 8896-90

DECISION

On April 21, 1992, the board issued a decision in this appeal. The "Town" moved for rehearing, asserting it had been denied an opportunity to summarize. The board granted the Town's motion and vacated the board's earlier decision pending the rehearing. The rehearing has been held, and the board now issues the decision.

The board reinstates the April 21, 1992 decision except to the extent modified or elaborated below. The elaboration is intended to address issues raised in the parties' rehearing motions. No changes were made as a result of the rehearing.

Values

After receiving the Taxpayer's rehearing motion, the board reviewed the inconsistency between the "$6.2 million" value on page 3 and the final value of "$6,700,700" on page 4. The prior decision contained an error on page three, which should have read "$6.7 million" in stating the 1990 range. The board verified this error by reviewing the calculations backing up the range, in particular the Town's cost approach with the site and land adjustments, totalling $6,620,000--$5,850,720 (building) plus $86,000 (site) plus $684,000 (land $570,000 times 1.20). Therefore, no change is warranted in the final 1990 assessed value stated in the decision.

The Range Revisited

The Town's rehearing motion questioned the board's use of the equalization ratios in converting the board's full value figures into assessments. The Town argued the board should not have applied the 46% and 48% ratios but should have

used 51% and 53%, which ratios were consistent with certain statistical arguments and the board's decision in Bernstein et al. v. Town of Gilford (BTLA docket number 5487-88) (hereinafter "Gilford Cases"). The board rejects this argument.

The Gilford Cases dealt with a range from the ratio because of the dearth of credible market evidence in those cases and due to evidence that showed the subject properties were part of a general class of properties that were overassessed. In this appeal, the Taxpayer submitted credible market evidence, albeit requiring adjustments. Furthermore, there was no evidence as to where in relation to the median ratio other properties similar to the Taxpayer's property were assessed. Therefore, the approach followed in the Gilford Cases is not applicable here.

What is applicable here is the existence of an acceptable range of market values. The board followed this approach by:

1) reviewing the full-value data to arrive first at a broad range as supported by the evidence (stated on page 3);

2) reviewing the evidence and the values in the original range to arrive at a tighter and more acceptable range; and

3) choosing a final value based on all the evidence and the board's judgment.

The Town would presumably now argue the board should have followed the Gilford Cases, using a ratio in the upper range, to convert the full values to assessments. We reject that because the range was used already in deciding full values. The assessments should not be the higher end of the full-value range adjusted by the higher end of the "ratio range" (for lack of a better term).

It is true the ratio does not necessarily apply to a specific property since the ratio is a median and is not stratified by property type. Nonetheless, the board was presented with the Town's admitted failure to follow RSA 75:8, which requires the Town to annually review assessments, and the Taxpayer's credible evidence of overvaluation. Given this evidence the board concluded disproportionate taxation was shown, and the board then reviewed the evidence and

applied the ratio to reach a fair assessment. There are very few commercial properties in the Town, the Town being predominantly a so-called "bedroom community." Therefore, in this town, the ratio is certainly some evidence of the generally prevailing level of assessment.

Conclusion

If taxes have been paid, the amount paid on the assessment in excess of $3,312,000 for 1989 and $3,216,000 for 1990 shall be refunded with six percent interest from the date paid to the refund date.

Costs

As stated in the rehearing order, the board would entertain the Taxpayer's motion for costs. The board awards the Taxpayer $336 in costs calculated as follows: 4.2 hours legal work x $80/hour. No costs are awarded for Carol Leipner Srebnick's time because no new evidence was to be received. So, she was simply an interested client attending the hearing.

Costs have been awarded because the rehearing was unnecessary. All of the issues the Town presented were argued by the Town at the original hearing. Therefore, the board finds the rehearing request to summarize frivolous. As stated in the rehearing order, this decision went against the Town not because the Town did not have an opportunity to summarize, but because the Town failed in its RSA 75:8 duty and failed to introduce any market evidence to refute the Taxpayer's market evidence.

The Town shall pay the Taxpayer $336. within 20 days of the clerk's date below.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Steven L. Winer, Esq., representative for the Taxpayer; Mary E. Pinkham, Department of Revenue Administration; Chairman, Selectmen of Hopkinton; and Russell Millard, Esq.

Dated: July 15, 1992
Valerie B. Lanigan, Clerk

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