



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: February 4, 2025

CBCA 8169, 8200

FORT FAIRFIELD BP, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Robert Clark, Managing Member, and John Clark, Authorized Representative, of Fort Fairfield BP, LLC, Falmouth, MA, appearing for Appellant.

David C. Charin, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Judges **SHERIDAN**, **ZISCHKAU**, and **CHADWICK**.

SHERIDAN, Board Judge.

The appellant, Fort Fairfield BP, LLC (Fort Fairfield), leases a property to the respondent, General Services Administration (GSA). Fort Fairfield appeals the denial of its claims to recoup a total of \$5184.01 in rent payments that GSA withheld pursuant to the lease agreement's real estate tax adjustment clause. GSA withheld \$3261.41 in rent payments relating to the 2021 tax year and \$1922.60 relating to the 2024 tax year.

Fort Fairfield challenges GSA's use of the 2020 tax year as the real estate tax base when applying the real estate tax adjustment clause for the 2021 and 2024 tax years. Since Fort Fairfield's appeals on its two claims ask the Board to interpret the same lease agreement

and decide which tax year is the real estate tax base, the Board consolidated the appeals pursuant to Rule 19 (48 CFR 6101.19 (2024)). For the following reasons, we deny Fort Fairfield's appeals.

Background

The lease agreement required Fort Fairfield to complete GSA-directed tenant improvements at Fort Fairfield's 169 Camden Street, Rockland, Maine, property (the property). Once Fort Fairfield completed the tenant improvements and GSA accepted them, GSA's lease term was to commence.

In lease amendment 1, dated April 10, 2018, GSA issued Fort Fairfield a notice to proceed with tenant improvements. Fort Fairfield completed the tenant improvements, and lease amendment 2 established July 27, 2018, as the completion date of the improvements. At that time, all ordered tenant improvements had been completed, and the amendment also established July 27, 2018, as the commencement date of the ten-year lease.

On December 12, 2018, GSA issued Fort Fairfield a notice to proceed with additional tenant improvements. It tasked Fort Fairfield with procuring and installing signage. Before Fort Fairfield completed this work, the City of Rockland (City) reviewed the property for the 2020 tax year. This review occurred on January 15, 2019, and the City used it to determine Fort Fairfield's 2020 real estate tax bill. Through lease amendment 3, GSA accepted the signage work as complete on February 1, 2019. The City's property review for the 2021 tax year occurred on May 13, 2020. The City used this review to determine Fort Fairfield's 2021 real estate tax bill.

In 2021 and 2024, GSA reviewed the lease agreement and identified the property taxes for the 2020 tax year, which totaled \$18,416.49, as the real estate tax base. Under the lease agreement's real estate tax adjustment clause, when the property's real estate tax bill is less than the real estate tax base, GSA receives a rental credit or lump sum payment from Fort Fairfield. The amount of the rental credit or lump sum payment is the difference between the real estate tax bill and the real estate tax base multiplied by percentage of occupancy. Section 1.12 of the lease agreement sets GSA's percentage of occupancy at 100 percent. Thus, the amount that Fort Fairfield owes GSA, when applicable, is the difference between the real estate tax bill and the real estate tax base multiplied by one.

For the 2021 tax year, the property's real estate tax bill totaled \$15,155.08. This was \$3261.41 less than the \$18,416.49 real estate tax bill for the 2020 tax base year. Consequently, GSA withheld \$3261.41 from its subsequent monthly rent payments. For the 2024 tax year, Fort Fairfield's real estate tax bill totaled \$16,493.89. This was \$1922.60 less than the real estate tax bill for the tax base year. As a result, GSA withheld an additional

\$1922.60 from its rent payments. In total, GSA withheld \$5184.01 for the 2021 and 2024 tax years.

Disagreeing with GSA's withholding of rent for the 2021 and 2024 tax years, Fort Fairfield submitted two claims to the contracting officer. For each claim, Fort Fairfield argued that the real estate tax base was the 2021 tax year, not the 2020 tax year. If the 2021 tax year is identified as the real estate tax base year, then, according to Fort Fairfield, GSA's rent withholdings for the 2021 and 2024 tax years would be improper. Fort Fairfield asserted that there would be no adjustment for 2021 (as there is no tax adjustment in the tax year that is the real estate tax base) and the real estate tax bill for 2024 was more, not less, than the 2021 real estate tax bill.

The contracting officer denied the claims, and Fort Fairfield timely appealed to the Board.

Discussion

"Real Estate Tax Base" and "Full Assessment" are the primary lease terms that the Board must interpret and apply to the facts of these appeals. Section 2.07 of the lease agreement defines "Real Estate Tax Base" as follows:

[T]he unadjusted Real Estate Taxes for the first full Tax Year following commencement of the Lease term. If the Real Estate Taxes for that Tax Year are not based upon a Full Assessment of the Property, then the Real Estate Tax Base shall be the Unadjusted Real Estate Taxes for the Property for the first full Tax Year for which the Real Estate Taxes are based upon a Full Assessment.

The lease then defines "Full Assessment" by explaining as follows:

The Property is deemed to be Fully Assessed (and Real Estate Taxes are deemed to be based on a Full Assessment) only when a Taxing Authority has, for the purposes of determining the Lessor's Liability for Real Estate Taxes, determined a value for the Property taking into account the value of all improvements contemplated for the Property pursuant to the Lease, and issued to the Lessor a tax bill or other notice of levy wherein the Real Estate Taxes for the Full Tax Year are based upon such Full Assessment. At no time prior to the issuance of such bill or notice shall the Property be deemed Fully Assessed.

The 2020 tax year is the “first full tax year following commencement of the lease” because the lease commenced after the beginning of the 2019 tax year.¹ What the parties dispute is whether the taxes for the 2020 tax year were based on a full assessment. If the 2020 taxes were based on a full assessment, the 2020 tax year is the real estate tax base. If, instead, the taxes for the 2021 tax year were the first real estate taxes based on a full assessment, the 2021 tax year is the real estate tax base.

Fort Fairfield’s Position

Fort Fairfield interprets “Full Assessment” in the lease to mean an assessment that values all improvements contemplated under the lease according to their “true market value.” Email correspondence from the former City assessor explains that, in 2020, the City performed a property assessment reevaluation. The reevaluation updated the construction cost tables that the City used to assess properties. The City first used the updated construction tables when assessing properties for the 2021 tax year. As a result, the 2021 assessment valued the property at its true market value. Fort Fairfield wants the Board to interpret this to mean that taxes for the 2021 tax year were based on a full assessment.

As further evidence that the 2021 assessment is the most accurate, Fort Fairfield asserts that the 2020 assessment was based on a building permit review. The basis of this opinion is that the property’s field card shows the phrase “BLDG PERMIT” next to the entry for the January 15, 2019, review. According to Fort Fairfield, assessments based on building permit reviews are “narrow in scope” and inconsistent “with a complete or thorough evaluation of the Property’s total market value.” In contrast, accompanying the field card entry for the May 13, 2020, review is the phrase “REVIEW PROPERTY.” Fort Fairfield believes that this means that the 2021 assessment was the first time the City thoroughly reviewed the property.

GSA’s Position

GSA relies on an affidavit from the current City assessor to refute appellant’s claim that the 2020 assessment was an inaccurate building permit review. Although the current City assessor did not personally assess the property for tax years 2020 and 2021, she is familiar with the City’s property assessment protocols. She explains that the field card entry for the January 15, 2019, review included the code number “26.” Code number “26” typically means that the assessor visited the property. Additionally, she explains that the entry for the May 13, 2020, review includes code number “15.” Code number “15” typically means that the assessor did not visit the property. Since the assessor visited the property in

¹ The lease commenced on July 27, 2018, and the 2019 tax year began on July 1, 2018.

January 2019, prior to making the 2020 assessment, GSA contends that the 2020 assessment is more accurate than 2021 assessment where the assessor did not visit the property.

The City assessor also explains that when the City performs annual property assessments, it takes into account all improvements made to the property as of April 1 of the year preceding the tax year. In other words, April 1 is the City's assessment date. According to the City assessor, this means that the 2020 assessment considered the value of all improvements completed as of April 1, 2019. Fort Fairfield completed all tenant improvements prior to April 1, 2019. As evidence of this, she points to the assessor's field notes from the January 15, 2019, review, which describe the building as "completed construction." Therefore, GSA argues that the 2020 assessment was a full assessment.

Interpretation of the Lease Agreement

When interpreting a lease agreement, its "language should be given the plain meaning that would be derived by a reasonably intelligent person acquainted with the contemporaneous circumstances." *Rafael Portillo v. General Services Administration*, CBCA 2516, 12-1 BCA ¶ 34,925, at 171,737. The inquiry ends if "the plain language . . . is unambiguous." *GEO Group, Inc. v. Department of Justice*, CBCA 7168, 23-1 BCA ¶ 38,411, at 186,642.

The lease states that a "Full Assessment" must "determine[] a value for the Property taking into account the value of all improvements contemplated for the Property pursuant to the Lease." Focusing on whether the assessment relies on the most up-to-date assessment tools and methods goes beyond the plain language of the agreement. The lease agreement is silent on the accuracy of the methods or tools used to assess the property. Instead, the definition focuses on whether the assessed value considers all the tenant improvements memorialized in the lease agreement.

One of our predecessor boards, the General Services Board of Contract Appeals (GSBCA), also interpreted the term "Full Assessment" in the context of a lease agreement's tax adjustment clause and focused on whether all tenant improvements were complete prior to the assessment. *Kimbrell v. General Services Administration*, GSBCA 11325, 93-2 BCA ¶ 25,665, at 127,684 (1992), *aff'd*, 15 F.3d 175 (Fed. Cir. 1994); *see also Otto K. Wetzel*, GSBCA 7466, 85-2 BCA ¶ 18,099, at 90,860. The Court of Appeals for the Federal Circuit, considering an appeal of one of those GSBCA decisions, recognized "that there can be no 'full assessment' of a property until all improvements contemplated in the lease have been made. Thus, 'full' means an assessment on the improved property." *Kimbrell v. Fischer*, 15 F.3d 175, 178 (Fed. Cir. 1994) (citing *Wetzel*, 85-2 BCA at 90,858).

While this refutes Fort Fairfield's interpretation of "Full Assessment," it is unclear if to be fully assessed all tenant improvements need to be complete prior to the assessor

reviewing the property or prior to the taxing authority's assessment date. The signage work was incomplete on January 15, 2019, when the assessor reviewed the property. Fort Fairfield, however, completed this work by February 1, 2019, which was before the April 1, 2019, assessment date.

While the statement from the City assessor supports the latter, we look to case law for further clarification. In *Kimbrell*, the Federal Circuit agreed with the core rationale in *Wetzel* and held that a full assessment can only occur "after all improvements contemplated in the lease have been made." *Kimbrell*, 15 F.3d at 178. In *Wetzel*, the taxing authority assessed a property sometime between January 1 and May 1, 1981. *Wetzel*, 85-2 BCA at 90,860. Regardless of when the assessor actually made the assessment, the taxing authority considered the property valued as of January 1, 1981. *Id.* The lessor completed tenant improvements after January 1, 1981. *Id.* Since the lessor completed the tenant improvements after the January 1, 1981, assessment date, the GSBCA held that the 1981 assessment was not a full assessment. *Id.*

We read *Wetzel* and the cases interpreting it as holding that an assessment can only be a full assessment if all improvements contemplated in the lease are complete before the taxing authority's assessment date. That happened here. All tenant improvements were complete before the City's assessment date for the 2020 tax year (i.e., April 1, 2019). This means the 2020 assessment accounted for all of the tenant improvements and therefore was a full assessment of the property.

The taxes for the 2020 tax year were based on a full assessment. As explained previously, it was also the first full tax year after the lease commenced. Therefore, GSA correctly used the 2020 tax year as the real estate tax base when implementing the real estate tax adjustment clause.

Decision

The appeals are **DENIED**.

Patricia J. Sheridan

PATRICIA J. SHERIDAN
Board Judge

We concur:

Jonathan D. Zischkau

JONATHAN D. ZISCHKAU
Board Judge

Kyle Chadwick

KYLE CHADWICK
Board Judge