

Colony Mill Marketplace
v.
City of Keene

Docket Nos. 3884-87 and 4978-88

DECISION

These two appeals, having been consolidated for hearing, were heard, as scheduled, on September 28, 1989. The Taxpayer was represented by Frederick L. Sewell and Miles A. Friend, both Appraiser/Agents. The Town was represented by Laurence Shaffer, City Assessor and Laura Thibodeau, Appraiser.

The Taxpayer appeals, pursuant to RSA 76:16-a, the following assessments for the 1987 tax year:

210 West Street
Land \$ 816,800
Buildings 4,059,900
Total \$4,876,700

Ashuelot Street
Land \$178,500
Buildings 107,500
Total \$286,000

and the following assessments for the 1988 tax year:

210 West Street
Land \$ 918,900
Buildings 4,567,400
Total \$5,486,300

Ashuelot Street
Land \$200,800
Buildings 121,000
Total \$321,800

The West Street property (Map 47, Section 1, Parcel 4) consists of a mill building converted to retail and office space on approximately 4.5 acres of land. The Ashuelot Street property (Map 98, Section 2, Parcel 15.00) consists of 3.53 acres of land improved as a parking lot which services the West Street property.

The parties agreed that the equalization ratio for the City of Keene for the 1987 tax year was 87 percent.

The parties agreed that the equalization ratio for the City of Keene for the 1988 tax year was 94 percent.

The Taxpayer argued it was overassessed based on an appraisal that used the income approach to value. The appraisal gave a market value of \$1,715,000 for the 1987 tax year. The appraisal used actual income and expenses from the 1986 fiscal year. Rent collections and common-area charges totaled \$1,070,024. Common-area and other expenses totaled \$898,525, leaving a net operating income of \$171,499. The Taxpayer used a capitalization rate of 10 percent to come up with a market value of \$1,715,000. The appraisal gave a market value of \$3,001,000 for the 1988 tax year. The appraisal used actual income and expenses from the 1987 fiscal year. Rent collections and common-area charges totaled \$1,200,666. Common-area and other charges totaled \$900,532, leaving a net operating income of \$300,134. The Taxpayer used a capitalization rate of 10 percent to come up with a market value of \$3,001,000.

The City's position was the subject property was the best retail

square foot, 40 percent above the national average. The City stated its building assessments equated to market values of \$42.60 and \$42.50 for 1987 and 1988, respectively, for 115,000 square feet of space and the land values equated to about \$200,000 per acre. The City stated the change in assessment from 1987 to 1988 was a result of its annual indexing based on sales. The City stated that the Taxpayer received \$1,000,000 in local funding and \$3,500,000 in industrial bonds, the sum of which corresponds to the \$4,500,000 in building permits. The City stated it requested an itemized list of expenses with invoices since it felt expenses were high and the services were performed by an affiliate of the general partners of the Taxpayer.

The Board rules as follows:

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same

and RSA 75:1 (supp) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the

assessed value of all other taxable estate bears to its true value. Boston &

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Maine R. R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450."
Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

"In Demoulas v. Town of Salem, 116 N.H. 775, 781-82, 367 A.2d 588, 593 (1976), we considered whether the board of taxation had properly refused to consider actual rents in applying the income capitalization approach. The facts of that case are similar to the instant facts: 'several leases for space in the shopping center are long term and have become very unprofitable for the plaintiff due to changed economic conditions. Thus, the actual income derived from the property is less than capacity income.' Id. at 781, 367 A.2d at 593. We upheld the board's rejection of actual rents, stating: 'We do not mean to suggest that consideration of actual income is improper in all cases. We hold only that, where the actual income from long term leases does not reflect the true value of the property because the leases were made in a time of boom or depression or as a result of poor management, the board may reject or give little weight to the capitalization of actual net income method.'

Id. at 782, 367 A.2d at 593. See Rollsworth Tri-City Trust v. The City of

Somersworth, 126 N.H. 333, 493 A.2d 462 (1985) (actual income capitalized where consistent with market rents).

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"The plaintiff urges us to construe Demoulas as requiring that actual rents be rejected only upon an evidentiary finding that 'the leases were made in a time of boom or depression or as a result of poor management.' This argument is untenable. The quoted phrase from Demoulas describes the types of situations in which a landowner may be burdened with unfavorable leases; it was not intended to prescribe these circumstances as the only ones in which market rents could be employed. Since market rents in the instant case were higher than the actual rental income, the master appropriately used these rents in valuing the property." Coliseum Vickerry Realty Co. Trust v. City of Nashua, 126 N.H. 368, 369-370, (1985).

The Board finds as follows. The West Street property consists of a renovated mill building with approximately 116,500 square feet of area and adjacent buildings with approximately 5,450 square feet of area on approximately eight acres of land. Approximately 72,000 square feet is retail space and approximately 17,500 square feet is office space.

Equalizing building assessments results in market values of \$38.27 and \$39.84 per square foot for 1987 and 1988 respectively. The raw-land assessments result in per-acre equalized values of \$142,468 and \$148,340 for 1987 and 1988 respectively. Equalizing the paving assessments results in market values of \$123,563 and \$128,723 for 1987 and 1988 respectively. The equalized assessments for both subject properties results in market values of \$5,934,135 and \$6,178,830 for 1987 and 1988 respectively.

The Board finds the market rent to be \$12 per square foot for retail space. Both the market rent and contract rent are \$10 per square foot for Colony Mill Marketplace v. City of Keene

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office space. Using square footage of 71,000 and 17,500 for retail and office space respectively results in rent collections of \$1,027,000. Adding the actual common-area charges and subtracting the actual expenses, which the Board does not necessarily agree are market figures, results in a net operating income of \$602,860 and a market value of \$6,028,600 for 1988, using a 10 percent capitalization rate.

The Board finds the Taxpayer had \$4,500,000 listed in building permits and \$4,500,000 in local funding and industrial bonds. Limited partner contributions were \$1,630,100 as of December 31, 1986. The Taxpayer listed its land, land improvement and building costs at \$6,225,147 as of December 31, 1987 on its balance sheet. The Board cannot imagine that the Taxpayer would have willingly sold its property for \$1,715,000 on April 1, 1987 or \$3,001,000 on April 1, 1988. Market value is based on arm's-length transactions and an arm's-length transaction requires a willing seller as well as a willing buyer.

The case at bar points out the weaknesses of the income approach to value, particularly where contract rent and actual expenses are used. In its report of June 12, 1989, the Taxpayer listed a site value of \$846,000, leaving a building value of \$869,000 or \$7.13 per square foot for 1987. Using the same site value gives a building value of \$2,155,000 for 1988 or \$17.67 per square foot. The income approach to value as presented by the Taxpayer is not convincing in regard to the market value.

The Board therefore rules the Taxpayer has failed to prove that the

assessment is unfair, improper, or inequitable or that it represents a tax in
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excess of the Taxpayer's just share of the common tax burden. The ruling is,
therefore:

Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

George Twigg, III

Peter J. Donahue

(Mr. Franklin did not sit.)

Paul B. Franklin

I certify that copies of the within Decision have been mailed this
date, postage prepaid, to Frederick L. Sewell, Taxpayer's representative, and
to the Chairman, Board of Assessors, City of Keene.

Date:

Michele E. LeBrun, Clerk

