

William H. Kelley, Trustee of Lamplighter Square Realty Trust
v.
Nashua

Docket No. 5018-88

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1988 assessments as follows:

278 Daniel Webster Highway:land \$ 207,700
improvements 278,600
\$ 486,300

295 Daniel Webster Highway:land\$ 769,100
improvements 1,106,400
\$1,875,500

278 Daniel Webster Highway (278 DWH) property consists of a lot of 41,688 square feet with 135 feet of frontage on Daniel Webster Highway improved with a two-story retail and office building and paved parking area.

295 Daniel Webster Highway (295 DWH) property consists of a 4.456 acre lot with 110 feet of frontage on Daniel Webster Highway and 51 feet of frontage on Danforth Road improved with a one-story "L" shaped retail building and paved parking area (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 it was disproportionally taxed.

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The Taxpayer argued the 1988 equalization ratio of 43 percent for Nashua, as determined by the Department of Revenue Administration, was indicative of the general level of assessments in the City and should be applied by the Board once determination of the proper market value of the Property is made.

The Taxpayer's basic arguments and conclusions of value are contained in Taxpayer's exhibit one (TP-1). In summary they are as follows:

278 DWH

A market value of \$648,000 based exclusively upon the income approach to value.

295 DWH

A market value of \$3,110,000 based exclusively upon the income approach to value.

The City testified that it was neither contesting the 1988 equalization ratio as determined by the Department of Revenue Administration nor did it use it in assessing the Taxpayer's Property.

The City's arguments and conclusion of value are contained in City exhibits A and B. In summary they are as follows:

278 DWH

A market value of \$705,300 based upon the income approach to value.

295 DWH

A market value of \$4,478,000 based upon the income approach to value.

Based on the evidence, the Board finds the correct assessments should be:

278 DWH: \$303,300

295 DWH: \$1,505,000

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. However, the existing assessment process allocates the total value between land value and building value. (The Board has not allocated the value between land and building, and the City shall make this allocation in

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accordance with its assessing practices.) We note that in making a judgment of
the proper

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assessment, the value of the entire property, i.e., land and building, must be established.

Lacking any evidence to the contrary, the Board rules, in this case, that the 1988 equalization ratio of 43 percent as determined by the Department of Revenue Administration is the best indication of the general level of assessment in the City at that time and therefore should be applied to the proper determination of the Property's market value in 1988.

DWH 278

For this parcel both parties agreed that the income approach should be given the most weight in determining its market value. In fact, the parties' estimates are within eight percent of each other (Taxpayer \$648,000 and City \$705,300). There was some discrepancy between the square footage of the building used in each appraisal, however. The Taxpayer indicated the total square footage was 7,800, while the City had it at 8,300. Based upon the City's appraisal, photographs and actual calculations from the Taxpayer's site plan (TP-8), the Board finds the City's estimate of the building's square footage to be the most accurate and, therefore, the City's value of \$705,300 is the best estimate of value. Applying the equalization ratio of 43 percent produces the proper assessment of \$303,300.

295 DWH

Both parties relied primarily on the income approach to value, arguing that the Property is income producing and a buyer would pay based upon the income capability of the property. While this premise is generally accepted in the appraisal profession, the dependence solely on one approach can lead to divergent conclusions by competent appraisers because of critical judgments the appraisers have to make in the appraisal analysis. In this case, for example, the income approach conclusions by the two parties are the most divergent of the approaches:

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TaxpayerCity

Cost Approach	\$3,445,000	\$3,900,000
Sales Approach	\$3,800,000	\$4,300,000
Income Approach	\$3,110,000	\$4,478,000

The income approach conclusions would most likely be more similar if the property was of a more regular shape and conventional development. As it is, the "dog leg" shape of the lot dictates the "L" shaped staggered strip mall structure with limited visibility from the highway and the one-way ingress from the highway. These aspects have a significant effect on the potential type of tenant, the rent, the vacancy rate and even potentially the mortgage rate. Therefore, it is important that the judgments made in the income approach be guided by any data that the cost and sales approaches provide.

The Board finds in reviewing and weighing all the data and imponderables submitted by both parties, such as the sale and resale of similar property, estimated replacement cost figures, the irregular configuration of the lot, the less than ideal access into the property, the limited visibility of the storefronts from the highway, the potential lease-out of the property, etc., that the market value of 295 DWH in 1988 was \$3,600,000.

Given all the imponderables in the valuation process, "[j]udgment is the touchstone" Public Service Co. v. Town of Ashland, 117 N.H. 635, 639.

Applying the equalization ratio of 43 percent produces the proper assessment of \$1,548,000.

If the taxes have been paid, the amount paid on the value in excess of \$1,851,300 (278 DWH \$303,300; 295 DWH \$1,548,000) shall be refunded with interest at six percent per annum from date paid to refund date.

The Board rules on the Taxpayer's request for findings of facts and rulings of law as follows:

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REQUEST FOR FINDINGS OF FACT

- 1.Granted
- 2.Granted
- 3.Granted
- 4.Denied (structural assessment of \$1,106,400)
- 5.Denied (4.456 acres not 4,456 acres)
- 6.Granted
- 7.Granted
- 8.Granted
- 9.Granted
- 10.Granted
- 11.Granted
- 12.Neither Granted Nor Denied
- 13.Granted
- 14.Granted
- 15.Granted
- 16.Granted
- 17.Granted
- 18.Granted
- 19.Granted
- 20.Granted
- 21.Granted
- 22.Granted
- 23.Granted
- 24.Neither Granted Nor Denied
- 25.Denied
- 26.Neither Granted Nor Denied
- 27.Neither Granted Nor Denied
- 28.Denied
- 29.Granted
- 30.Granted
- 31.Granted
- 32.Granted
- 33.Granted
- 34.Granted
- 35.Granted
- 36.Granted
- 37.Granted
- 38.Granted
- 39.Granted
- 40.Granted
- 41.Granted
- 42.Denied

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43.Granted

44.Granted

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REQUEST FOR RULINGS OF LAW

1. Granted
2. Granted
3. Granted
4. Granted
5. Granted
6. Neither Granted Nor Denied
7. Granted
8. Granted
9. Granted
10. Granted
11. Granted
12. Granted
13. Granted
14. Granted
15. Granted
16. Neither Granted Nor Denied
17. Granted
18. Granted
19. Denied
20. Granted
21. Granted

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Donald M. Munro, Agent for William H. Kelley, Trustee of Lamplighter Square Realty Trust, the Taxpayer; the Chairman, Board of Assessors of Nashua.

Brenda L. Tibbetts, Clerk

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Date: January 13, 1992
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