A.G.C. Realty Association

v.

Town of Derry

Docket No.: 6261-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $739,355 (land, $203,400; buildings, $535,955) on its real estate at 7 Chester Road, consisting of an 80 year old mill complex on 9.0+/- acres (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 Taxpayer argued the assessment was excessive because:

(1) the Town used total building area for calculating gross income as opposed to the actual gross leasable area;

(2) a higher vacancy rate and a lower gross rental rate than the Town used is appropriate given the many functional and locational obsolescences of

the Property; and

(3) an appraisal by Minco Development Corp. estimates the Property's market value by both the income and market approaches at $450,000.

The Town submitted an appraisal report which included estimates of value by the cost and income approaches and an assessment comparison of comparable properties.

The Town argued the assessment was proper because:

(1) the Property would demand a higher economic rent than similar mill buildings in Manchester because it is located in Derry and would be influenced by the high demand for manufacturing/warehouse space in Derry in 1989;

(2) the income approach was relied upon for assessing the Property;

(3) the rental rate was estimated at 75% of the economic rent to reflect the poor functional utility of the building; and

(4) the capitalization rate was increased from a direct capitalization rate estimate of 10.3 percent to 11.5 percent to reflect a higher risk factor.

Board's findings and rulings

Based on the evidence, we find the correct assessment should be $600,000. This Property poses a difficult appraisal challenge. It is the only old mill building in Derry historically located on a water power source in what now is a residentially zoned neighborhood. It has many of the typical outdated and disfunctional aspects inherent in old mill complexes such as lower ceilings, inefficient access, poor internal layout, etc. As the Town correctly stated, in appraising this Property a large share of common sense and judgment needs to be applied due to the lack of directly comparable market data.

It has been said that "(t)he search for 'fair market value' is a snipe hunt carried on at midnight on a moonless landscape." Fusegni v. Portsmouth Housing Auth., 114 N.H. 207, 211 (1974) (quoting Bigham, "Fair Market Value", "Just Compensation", and the Constitution: A Critical View, 24 Vand. L. Rev. 63, 90 (1970)).

"Given all the imponderables in the valuation process, '[j]udgment is the touchstone.'" Public Serv. Co. v. Town of Ashland, 117 N.H. 635, 639 (1977).

The board finds, as both parties agreed, that the income approach is the most appropriate method of valuation for this Property. The board finds merit and gives weight to many arguments of both parties.

While on one hand the rental rates for this type of property would be lower than for newer more efficient buildings, as the Taxpayer agreed, the general demand for industrial/warehousing space in Derry does have some positive effect on the rental rate.

The board finds a vacancy rate of 10% is reasonable. Given the original layout and design of the building, it is reasonable that a higher than normal area of the building would not be usable or leasable by either a single tenant or even by several tenants if partitioning of the building was done.

The board finds the Town's capitalization rate of 11.5% is appropriate for this higher risk type of property.

The parties' estimates of the area of the building varied. The Town had two numbers: 36,223 square feet in its cost approach and 32,767 in its income approach. The Taxpayer had three numbers: 31,700 in its summary of presentation; 35,934 in the description of the building section of the appraisal report; and 31,069 leasable area in the income approach section (sum of square footage of chart on page 47, Exhibit TP-1). The board finds the Town's gross leasable area of 32,767 is a reasonable estimate and unit of measurement and is in line with the methodology used by the Town in analyses of industrial leases.

Based on the above findings and all evidence submitted, the board finds that $2.75 per square foot is a reasonable rental rate for this Property with all its locational and disfunctional aspects.

In summary, the valuation is calculated as follows:

Gross Potential Income (32,767 x 2.75)	=$ 90,109
Vacancy 10%	-$ 9,011
Effective Gross Income	$ 81,098
Expenses and Management (15%)	-$ 12,165
Net Operating Income	$ 68,933
Capitalization Rate	.115
Indicated Value	$599,417 ($68,933 ÷ .115)
Rounded	$600,000

In making a decision on value, the board looks at the Property's value <u>as</u> <u>a</u> <u>whole</u> (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 Town shall make, if necessary, this allocation in accordance with its assessing practices.)

If the taxes have been paid, the amount paid on the value in excess of $600,000 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert H. Fryer, Esq., representative for the taxpayer; and Chairman, Selectmen of Derry.

Dated: July 9, 1992

Valerie B. Lanigan, Clerk

0007