Granary of Derry, Inc.

v.

Town of Derry

Docket No.: 6933-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $1,337,100 (land, $86,000; buildings, $1,251,100) on its real estate at 16 Manning Street, consisting of one building with 10 commercial units and 20 residential rental units on a .719 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 Taxpayer argued the assessment was excessive because:

(1) the basic problem with the building is its poor location; Manning Street essentially is a dead end street;

(2)the redevelopment plan for the Town to improve the railroad right-of-way and Manning Street for better access and parking has not gone forward;

(3) tenants were "carried" (allowed not to pay rent) in 1989 so as to make the Property look attractive; and

(4) the market value in 1989 was in the $750,000 to $800,000 range based on the income approach.

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

The Town argued the assessment was proper because:

(1) it was based upon the income approach to value; and

(2) the Property was appraised similar to an as if it were an older building by using lower economic rents derived from older buildings; higher capitalization rates than generally appropriate for newer buildings; and a higher vacancy rate than older rental property in the neighborhood.

Based on the evidence, the board finds the correct assessment should be $1,000,000.

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 Town shall make this allocation in accordance with its assessing practices.)

The board finds that the Taxpayer's evidence as to the vacancy history of the Property is reasonable given the location of the Property and the evidence of the Taxpayer's efforts to advertise and attract tenants. The board finds the Town's capitalization rate of 10.5 is reasonable based on general market data for commercial/rental property.

The board finds that properly calculated estimates of value using the Taxpayer's actual gross operating income and the Town's estimated income both arrive at similar indications of value.

<u>Taxpayer's Numbers</u>

1989 Gross operating income $148,285
1989 Expenses (not including depreciation, <u>- 43,601</u>
interest on taxes but including 3% management
fee above the actual advertising and phone expenses)
1989 Net operating income $104,684
Capitalization rate 10.5%
Indicated value $996,990
($104,684/.105)

<u>Town's Numbers</u>

1989 Total economic gross rent (apartments and retail) $194,695
minus 25% vacancy (weighted estimate based upon
testimony of Taxpayer's actual vacancy rate)
1989 Effective gross income 146,021
Town's estimate of expenses and management fee <u>- 39,875</u>
1989 Net operating income $106,146
Capitalization rate 10.5%
Indicated value$1,010,914
($106,146/.105)

The board understands the Town's concerns about having a newer and larger building drop in assessment as it may be used as a benchmark for other properties. However, based on the evidence, it is the location (lack of traffic and visibility from West Broadway) that affects its value in a negative fashion to a greater extent (especially for the ground floor retail space) than the generally good condition of the building affects it in a positive fashion. Therefore, the Property has little comparability to other retail property that have greater visibility of being on a heavier travelled main street. Further, the Town has the responsibility under RSA 75:8 to review assessments annually and revise if disproportional. If Manning Street is redeveloped and the Property is then easier to rent, the assessment can be increased if it is at that point disproportionately underassessed.

If the taxes have been paid, the amount paid on the value in excess of $1,000,000 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

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert E. Spacek, representative for the Taxpayer; and Chairman, Selectmen of Derry.

Dated: July 7, 1992

Valerie B. Lanigan, Clerk

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