Hillsborough Group

v.

Town of Merrimack

Docket Nos.: 7807-89 and 9615-90

DECISION

The "Taxpayer" appeals,[1] pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of $784,300 (land, $246,000; buildings, $538,300) on a .968-acre lot with a one-story retail building (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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 assessments were excessive because: (1) an income approach analysis for both years estimated a value of

[1] The Board rescinds its February 1, 1993 "Order for Withdrawal" to the extent the order addressed the 1989 and 1990 appeals. At the hearing, the Taxpayer's representative stated the 1991 appeal was withdrawn, and he filed a withdrawal that did not state the year withdrawn. Mistakingly, the board's staff treated the withdrawal as being applicable to the 1989 and 1990 appeal. The board reviewed the record of this hearing, and only the 1991 appeal was to be withdrawn. The board's error is a main reason for the delay in issuing this decision.

$656,000;

(2) the Property incurred a substantial rent loss when a tenant breached the lease and moved out;

(3) the Taxpayer disagreed with the vacancy rate and capitalization rate used by the Town in its income approach

The Town argued the assessments were proper because:

(1) the Town's capitalization rate was based on sales and the vacancy rate was also derived from the market;

(2) in 1989 the vacancy rates were low because of the demand for space; and

(3) the Property's specific vacancy should not considered but rather the market rate should be used.

Board's Rulings

Based on the evidence, the correct assessment should be $703,860. 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 parties basically agreed about the applicable rent and expenses, but they disagreed about the vacancy and capitalization rates. The board concludes the Town's 5% vacancy rate was too low given the difficulty with renting this large, single-tenant building. Therefore, the board has chosen a conservative 10% vacancy rate. We have also not accepted the Taxpayer's 15% vacancy rate because insufficient data was submitted to support it.

Additionally, the board finds, as it has in previous Town cases, the Town's 10% capitalization rate to be too low. The board's reason for not accepting the Town's 10% capitalization rate was spelled out in New Hampshire Merrimack River Ltd. Partnership v. Town of Merrimack, Docket No. 7609-89, page 8-10 (attached). The board, however, does not accept the Taxpayer's 11.2% cap rate since insufficient data was submitted to support the rate. As the Taxpayer's representative knows, a proper capitalization rate is either derived from the market or through the band-of-investment technique. Finding both capitalization rates to be suspect, the board has adopted a rate in the middle -- 10.5%.

The recalculated income approach is as follows.

Gross Rent (9536 s.f x $10.00)	$95,360
Percent Occupancy (90%)	$ x .90
Income After Occupancy	$85,824
Effective Gross Income	$85,824
Total Expenses	-$ 7,629
Management 5% of Effective Gross	-$ 4,290
NET INCOME	$73,905
CAPITALIZATION RATE	10.5% cap rate
VALUE - INCOME APPROACH	$703,860 (rounded)

If the taxes have been paid, the amount paid on the value in excess of $703,860 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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Marvin F. Poer & Co., Representative for the Taxpayer; Office of the Assessor or Merrimack; and Jay L. Hodes, Esq., Representative for the Town.

Dated:

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Valerie B. Lanigan, Clerk