

M.C. Holdings Associates

v.

Town of Merrimack

Docket Nos.: 7861-89 and 8682-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of:

Map/Lot #Land AssessmentBuilding AssessmentTotal Assessment

5D-2/0002\$1,632,700\$3,919,900\$5,552,600; and
5D-3/114\$ 150,700\$ 0\$ 150,700.

The "Property" is a shopping center with approximately 87,000 square feet of rentable space. For the reasons stated below, the appeals for abatement are 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) the Property was purchased from Fleet Bank for \$5,000,000 in 1989 (with very favorable financing terms) on the assumption that the units could be rented and the anchor tenants retained;
- (2) the Taxpayer was unable to economically rent up the space and transferred the Property back to Fleet Bank in March, 1991;
- (3) Fleet Bank resold the Property in September, 1991 for \$1,600,000;
- (4) the Property has some site problems, including being below road grade resulting in poor visibility;
- (5) the IGA store, the anchor tenant, was rendered obsolete by the opening of two other major supermarkets;
- (6) the loss of the anchor tenant adversely affected the marketability of the other units;
- (7) an income-approach analysis estimated a \$4,600,000 (1989) value; and
- (8) an analysis from a realtor detailed the problems with the Property and the negative affect on the Property's value.

The Town argued the assessments were proper because:

- (1) the Property sold twice in 1989 for \$6,250,000 and for \$5,000,000;
- (2) the long-term value of the Property must be viewed;
- (3) the value was consistent with the income analysis and model used throughout the Town; and
- (4) the board should not consider the consequences of poor management in the role of the government assessing property for taxation.

Board's Rulings

Map 5D-2, Lot 0002

Based on the evidence and the calculations stated below, the board determines that a proper assessment for both years is \$4,250,000.

This assessment is ordered because:

1) the board finds it was not bad management that caused the net operating income of the Property to decline, but rather the Property's economic disadvantage due to its inferior location and its competition with newly open plazas with larger and superior anchor tenants; in fact, the board finds that Fleet Bank aggressively marketed the Property before the foreclosure sale and the subsequent purchaser, the Taxpayer, explored options and aggressively attempted to lease up the vacant space;

2) the board finds this property is an example of the restructuring of value and market rents that was taking place in 1989 and 1990 reflecting both the general declining cash flow relative to earlier financing commitments and the competitive disadvantage of the anchor tenant space relative to the newly competing Shaws and Alexanders;

3) the Town's argument that the Taxpayer had access to the balance of the anchor tenants contract rent through litigation is not a substitute for the Town's assessing responsibility to consider market rents as the basis for determining market value as opposed to contract rents and moreover, rent sought to be collected through litigation is not the same as rent being paid monthly by a tenant occupying a landlord's building;

4) market rent is defined as "the amount that would result from a lease negotiated on the open market between a willing lessor and a willing lessee, both knowledgeable and free of influence from outside sources." International Association of Assessing Officials, Property Appraisal and Assessment Administration, 253-54 (1990);

5) based on the evidence the anchor tenant, IGA, was paying contract rent in excess of market rent, and thus, if the assessment was based on contract rent, the resulting assessment would be excessive;

6) the board finds, based upon the evidence submitted by both parties and the income producing nature of the Property, the income approach to value provides the best estimate of value for the two years under appeal;

7) for 1989, the board finds the Town's estimate of net operating income of \$511,986 to be reasonable and generally supported by the Taxpayer's actual income and expenses for the preceding year;

8) for 1989 the board finds the proper capitalization rate should be 12% because of the marketing difficulties and higher risk involved for the Property;

9) for 1990, the board finds that the net operating income needs to be reduced to \$467,126; this lower net operating income reflects a reduction in the market rentable in the market rent rate for the former IGA space from \$6.00 per square foot to \$4.00 per square foot and an estimate of expenses at 15% of the effective gross income;

10) for 1990 the board finds the proper capitalization rate should be 11% reflecting the lowered risk of having restructured the former IGA space and renting it at lower competitive market rents;

11) the board finds that the income approach to value captures all the land and improvement values for this parcel; while the lot may have some potential for further development or expansion of the existing improvements, the board finds that the development patterns of commercial/industrial property in Merrimack indicate the present most economically feasible use of the entire parcel is in support of the existing improvements; furthermore, it is unlikely the market in 1989 and 1990 would recognize any significant expansion or further development value for this parcel given the economic difficulties the existing improvements were going through to be fully marketed and leased up; and

12) based on the above findings, the indicated valuation for 1989 is \$4,266,550 ($\$511,986 \div .12$) and for 1990 is \$4,246,600 ($\$467,126 \div .11$).

Map 5D-3, Lot 114

The board finds that there was no evidence submitted as to the overassessment of this parcel, therefore the board finds this parcel was properly assessed at \$150,700.

If the taxes have been paid, the amount paid on the value in excess of \$4,400,700 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

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; and Office of the Assessor of Merrimack.

Valerie B. Lanigan, Clerk

Date: March 15, 1993

0009