

Kazmiera Realty Trust

v.

Town of Danville

Docket No.: 8819-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$287,550 (land \$91,600; buildings \$195,950) on Lot 61-1, a 1.043-acre lot with a four-apartment building and office and \$7,950 on Lot 61-1-B, a vacant 4.35-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted on Lot 61-1 and denied on Lot 61-1-B.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden for Lot 61-1 and did not carry it for Lot 61-1-B.

The Taxpayer argued the assessments were excessive because:

(1) The Property was foreclosed on by a bank and listed for \$199,500. The Trust purchased the Property in July, 1990, for \$175,000 with reduced down payment requirements (\$15,000) and a lower mortgage rate (9% fixed, no points).

The purchase was for the apartment building and office on 1.043 acres and included in the transfer was the 4.35 acres of land located several hundred

feet away.

(2) The Property cannot be separately sold because the land is required to meet the Town's density requirements for property with building improvements.

(3) A comparable 5-unit property sold across the street in February, 1989 for \$245,000 and is assessed for \$280,150.

The Town argued the assessment was proper because:

(1) The bank's foreclosure took place in June, 1990 and the Taxpayer purchased the Property in July, 1990.

(2) Purchase of a property following foreclosure is not market value.

(3) The Town was not allowed to inspect the interior of the property across the street.

(4) The 4.35 acre lot was assessed as having abutter value.

(5) The Town does not dispute the Taxpayer's claim of highest and best use but feels the assessment is fair.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board did not rely on the inspector's report.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$273,200 on Lot 61-1 and no change to the assessment of Lot 61-1-B. 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.

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Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). 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.) This assessment is ordered because:

1) The Taxpayer testified the Property's purchase price was \$175,000 in July, 1990. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arms-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). The board finds the purchase of the Property was not an arms-length transaction due to the foreclosure by the bank one month prior. The Property was not actively marketed. Sales made by an owner to satisfy delinquent loans are not arms-length due to the pressure to sell; consequently, while these accelerated sales will affect the market value of those who choose not to sell, they alone do not define the market.

2) The comparable sale at 104 Beach Plain Road for \$245,000 in February, 1989 and the photographs of the subject and comparable support an adjustment. However, no evidence was submitted as to what adjustments should be made to update the comparable to the date of assessment, to adjust for differences in

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size, condition, etc.

3) Based on the evidence submitted and the board's experience, the board finds that some adjustment is warranted however, and has determined that an adjustment of 5% to the assessment of Lot 61-1 is in order. The board finds no adjustment is warranted to Lot 61-1-B and finds the assessments of both lots combined, as abated, equal \$281,150 which equates to a fair market value of \$255,600 ($\$281,150 \div 1.10$ equalization ratio for 1990). The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Guimm, ___ N.H. ___ (December 17, 1993) (administrative board may use expertise and experience to evaluate evidence).

If the taxes have been paid, the amount paid on the value in excess of \$273,200 on Lot 6-1 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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to R.L. Bennett, Trustee of Kazmiera Realty Trust, Taxpayer; and Chairman, Selectmen of Danville.

Dated: February 16, 1994

Valerie B. Lanigan, Clerk