Hudson Vickery Realty Trust

v.

Town of Hudson

Docket No.: 9494-90PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $2,332,000 (land $343,000; buildings $1,989,000) on a shopping center (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 203.09(a); 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 Property was in transition with a 56,000 square foot mall being enlarged to a 115,620 square foot mall; and

(2) based on an income and expense analysis, the 1990 fair market value of $6,470,000 should be reduced by 25% for the fact that the Property was not fully operational.

The Town argued the assessment was proper because:

(1) the addition of the 59,550 square foot "Alexander's" building space was assessed at 95% complete as of April 1, 1990;

(2) the difference between the Town's income approach and the Taxpayer's is in the appreciation applied in arriving at the capitalization rate;

(3) a 25% adjustment for income loss between 1990 and 1991 does not account for any of the construction in place and the Town's 5% adjustment is more appropriate; and

(4) the assessment is proper and the appeal should be denied.

Board's Rulings

Based on the evidence, we find the correct assessments should be $2,232,550 (land $343,000; building $1,889,550). This assessment is ordered based on an additional 5% depreciation applied to the building portion of the value to recognize the unleased space as of April 1, 1990 due to the addition and renovations of the existing space.

This assessed value is also supported by a market value finding by the income approach based on the evidence submitted by the parties. The board determined a market value estimate by the income approach of $6,343,844 which supports the indicated market value of $6,378,714 derived by equalizing the ordered assessment of $2,232,550 ($2,232,550 ÷ .35). This income approach estimate is based on the evidence and the following findings:

(1) a net operating income exclusive of the McDonald's ground lease of $799,946;

(2) a gross potential income of $54,000 for the McDonald's ground lease;

(3) an expense factor of 15% for the McDonald's ground lease;

(4) a total net operating income of the entire property of $845,846;

(5) an interest rate of 10%; a loan to value ratio of 70%; a term of 25 years; a holding period of 15 years; an equity rate of 12%; an annual appreciation rate of 2%; and an effective tax rate of 2%;

(6) an overall capitalization rate of approximately 12% derived from the mortgage equity technique assumptions in number 5; and

(7) a 10% reduction of the indicated value in 1991 by the income approach to recognize the unrenovated and empty space existing on April 1, 1990.

If the taxes have been paid, the amount paid on the value in excess of $2,232,550 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, <u>not the date this decision is received</u>. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Marvin F. Poer & Company, representative for the Taxpayer; and Chairman, Board of Selectmen of Hudson.

Dated: September 16, 1994

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Valerie B. Lanigan, Clerk

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