Lancaster Association

v.

Town of Lancaster

Docket Nos.: 9613-90 and 11605-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $398,500 (land $83,950; buildings $314,550) and 1991 assessment of $416,600 (land $83,950; buildings 332,650) on a 7.5-acre lot with an 8-unit apartment building and 2 duplexes (the Property). 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried their burden.

The Taxpayer argued the assessments were excessive because:

(1) the Property has had a history of financial difficulties which is unusual for subsidized rental units;

(2) repairs and improvements were completed in 1990 to correct for its poor

quality construction and the damages done by former tenants;

(3) the value of the Property is in its cash flow;

(4) the Property is under a 50 year contract with Farmers Home Administration with a limited return of 8% to the owner;

(5) due to the small size of the Property (12 units), the Property is expensive to manage;

(6) the income approach indicates a market value of the Property of $250,000 which indicates an assessment of $260,000 and $280,000 for the 1990 and 1991 tax years respectively.

The Town argued the assessments were proper because:

(1) the assessments are comparable on a per unit basis with other subsidized apartments in Town;

(2) two subsidized housing complexes, one in Lancaster and one in Whitefield, sold in 1991 both indicating a gross income multiplier of 4.6 which when applied to the income of the subject property, supports the assessments;

Board's Rulings

Based on the evidence, we find the correct assessments should be $318,800 and $333,300 for 1990 and 1991 respectively. 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 municipality shall make this allocation in accordance with its assessing practices.)

The Board rules that all factors affecting a property and all methods of valuation should be considered and weighed in determining the correct valuation.

"In estimating market value for the purposes of taxation, no single method of evaluation is controlling in all cases (Dartmouth Corp. of Alpha Delta v. Hanover, 115 N.H. 26, 332 A.2d 390 (1975)), but all relevant factors to property value should be considered. (Paras v. Portsmouth, 115 N.H. 63, 67-68, 335 A.2d 304, 308 (1975)) Demoulas v. Town of Salem, 116 N.H., 775 (1976).

While not unmindful of the dissent in Royal Gardens Co. v. Concord, 114 N.H., 668 (1974), the Board rules that the N.H. Supreme Court has held in Steele v. Town of Allenstown, 124 N.H., 487 (1984) that . . . "to ignore the government regulations and federal subsidies in assessing value also is contrary to the rule that government regulations concerning subsidized financing are a relevant factor for the purpose of determining the market value of federally subsidized housing, see Royal Gardens Company v. City of Concord, 114 N.H. 668,671-72, 328 A.2d 123, 124-25 (1974), and the rule that "in estimating the value of property, . . . state and federal control of income is taken into account." Demoulas v. Town of Salem, 116 N.H. 775, 781, 367 A.2d 588,593 (1976). However, the Board also finds that the court has specifically not limited assessors in appraising subsidized property from considering all relevant factors other than government regulations.

The board finds the Property was constructed and renovated with funds

obtained from the Farmers Home Administration (FMHA) Section 515 Program and is subject to the regulations of the program including approval of budgets,

rents, tenant qualifications, etc. The long term nature of the financing and the commitment to retain the Property for low income housing voids any long term equity prospects for the owners. As incentives the owners of the Property receive both an interest subsidy with an effective annual rate of 1% and rent subsidies equal to the maximum rental charges as determined by FMHA. Consequently, the value of the Property is: 1) in its relatively low risk and well defined cash flow and how that may benefit owners and related parties such as management companies, and 2) any short-term financial benefits that could accrue to partners of a partnership owner. The board finds that these benefits are conceivably available to any potential owner and thus are germane in estimating value. Again in Steele v. Town of Allenstown, 124 N.H., 487 (1984) . . . we agree that the value of property for taxation purposes is not determined by the value to the owner, Trustees &c. Academy v. Exeter, 92 N.H. 473, 485-87, 33 A.2d 665, 673-74 (1943), but, "if the property is available to others for use which he has made of it, such transmissible use is of material bearing in estimating value." Id. at 486.33 A.2d at 673.

Ideally, the market approach to value would be the best method to use in appraising subsidized properties as it properly measures the economic obsolescence of government regulations and any benefits that ownership of the property would provide. The Town presented two sales of subsidized properties. However, the board gives the sales no weight because: 1) the Town did not investigate the conditions of the sales; such sales of subsidized properties are rare and for them to be of probative value the motivations of

the parties and the basis of the consideration need to be determined, and 2) the sales were of projects financed and regulated by HUD with different

regulations, subsidies and terms; thus, the properties are not comparable and any valuation indicators derived from the sales would not be applicable to the subject Property.

If considered independent of each other, the remaining two approaches to value, cost and income, do not provide good indications of value, but when contrasted and weighed, they indicate factors that would affect value.

The cost approach alone is not determinative of value because it tends to define the upper limit to value and, in the case of subsidized property, does not provide a method for quantifying the effect of governmental regulations on value.

The income approach alone, is not reliable in this case because the income, some expenses and the capitalization rate are so artificially generated. The actual income for the Property was increased during the years in question to subsidize the renovation costs to make this property attractive and fully rentable and some of the expenses seemed extreme for the market and excessive even accepting the Taxpayer's argument of reduced economy of scale related to the 12 unit size. Likewise, the capitalization rate used as a component the effective interest rate of 1% of the FMHA note. This rate is so ludicrously low it is not reflective of an investor's expected rate of return from the income stream and is not a good factor in indicating a reliable estimate of market value.

However, the income approach does indicate that there are specific governmental regulations that would affect market value and that the small size of the project does reduce its attractiveness from a management standpoint due to reduced economies of scale.

Based on these factors, the rental history of the Property, its original quality of construction and its present renovated state, the board finds an economic factor of - 20% should be applied to the total assessed value for the

two years appealed. This factor results in the proper assessments of: 1990 - $318,800 and 1991 - $333,300.

If the taxes have been paid, the amount paid on the value in excess of the amounts listed above shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c

and board rule Tax 203.05, the Town shall also refund any overpayment for 1992, and until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

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

Dated: October 21, 1993

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Valerie B. Lanigan, Clerk

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