

Bradford Realty Trust

v.

Town of Bradford

Docket No.: 11500-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

\$50 on Lot 33-165-213, a vacant, .3-acre lot;

\$226,500 (land \$20,000; buildings \$206,500) on Lot 33-217-209, a 2-acre lot containing four, 4-apartment buildings; and

\$700 on Lot 33-213-193, a vacant, 1.1-acre lot (the Properties).

For the reasons stated below, the appeal for abatements 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 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 assessments were excessive because:

- (1) a July, 1991 appraisal estimated the value of the Property to be \$400,000;
- (2) the Department of Revenue Administration (DRA) performed a revaluation in 1992 and a final estimate of value arrived at was \$287,000 as of April, 1992;

(3) assuming the 1992 value was correct, the equalized value as of April, 1991 should be \$106,000;

(4) market values were declining at approximately 12% per year and the Property was unmarketable in 1991 and 1992;

(5) the range of market value as of April, 1991 is between \$287,000 and \$400,000;
and

(6) an assessment of \$100,000 is fair and equitable.

The Town argued the assessments were proper because:

(1) the Town disagrees with the appropriateness of the DRA equalization ratio because lake properties were over represented in the sample of sales used;

(2) the ratio study indicates waterfront properties were disproportionately assessed in relation to all other property and a proper ratio for the Town would be 43%;

(3) the Town was not privy to the Taxpayer's appraisal during the revaluation process and the appraisal indicates that the 1992 assessment is underassessed;

(4) the income approach of the Taxpayer's appraisal included taxes as an expense item which is not an acceptable procedure and did not include an adjustment for management;

(5) adjusting the appraiser's report (by adding a 3% management fee and eliminating taxes as an expense) would indicate a value of \$487,400 or an assessed value of \$209,600 which is within 10% of the assessed value; and

(6) therefore, the assessment is proper.

Board's Rulings

Based on the evidence, we find the 1991 market value of the property to be \$375,000, resulting in a proper assessed value of \$138,750 ($\$375,000 \times .37$).

Two general issues were presented to the board: 1) determination of the general level of assessment of property in the Town in 1991; and 2) determination of the proper 1991 market value.

General Level of Assessment

The Town argued the 37% ratio as determined by DRA was not representative of the general level of assessment of all property within the Town because the sample used by DRA was not representative of the property mix within the Town. Specifically, of the 12 sales analyzed by DRA, the Town argued a third were waterfront properties while the actual number of parcels of waterfront property in Town was less than 13%. The Town argued the removal of all the waterfront sales resulting in a median ratio of 43%.

The board finds no evidence was submitted as to the representativeness of the balance of the sales in the sample. While in theory the Town's argument is correct that the sample should be as representative as possible of the property mix within the Town, the board is unable to, from the evidence submitted, determine the actual representativeness of the entire sample. Therefore the board finds the inclusion of all the sales that were qualified by the DRA results in a ratio that is more reasonable. Further, the board would note that if it were to agree with the Town's argument that waterfront properties were overrepresented and instead of excluding all waterfront sales more properly included one waterfront sale, the median ratio would be 39%.

instead of 37%. This difference based on the small size of the sample is statistically insignificant and has a high level of uncertainty related to it. Market Value

There are three approaches to value: 1) the cost approach; 2) the comparable-sales approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate at 71 (10th Ed. 1991); International Association of Assessing Officials, Property Assessment Valuation at 38 (1977).

While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Assessment Valuation at 38. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

The board finds that due to the income producing nature of the property, the income approach is the more appropriate of the three approaches to value in this case. The board finds the best evidence as to the income approach is contained in the appraisal submitted by the Taxpayer prepared by George LeMay of Capital Appraisal Associates. Further, the board finds that in many instances a discounted cash flow analysis, as performed by Mr. LeMay in this case, can be a reasonable method of estimating value by income approach. However, due to the nature and condition of the Property, the extreme uncertainty of the investment potential for this type of property and the inherent future assumptions that must be made, the discounted cash flow analysis is not reliable in this case. The board finds the direct

capitalization method has slightly fewer assumptions and is more appropriate in arriving at the value of this property.

The board finds the potential gross income and the vacancy rate as presented in Mr. LeMay's appraisal are reasonable and supported. Further, the board finds some of the expenses estimated by Mr. LeMay (insurance, maintenance and reserve for replacement) are also reasonable. However, the board finds the real estate taxes should be removed as an expense and be considered in the overall capitalization rate. Further, the board finds an estimate for management and miscellaneous expenses at 5% of the effective gross income should be deducted to accurately reflect those expenses.

The board finds the 12% capitalization rate derived by Mr. LeMay is reasonable and supported by the assumptions contained in his mortgage equity technique. The board finds Mr. LeMay's equity yield rate estimate of 11% is very reasonable for this type of property given the property's actual higher vacancy rate, electric heat and relatively low demand due to competing seasonal rental units in the general area.

The board finds the 1991 effective tax rate for the Town of Bradford was approximately 2.79% and should be added to the capitalization rate to arrive at an overall rate of 14.9%.

Based on the above findings, a summary of the direct capitalization income calculations and the indicated proper assessment is as follows:

Potential Gross Income	-\$81,600
Vacancy (15%)	<u>-(12,240)</u>
Effective Gross Income	-\$69,360
Expenses	
Insurance	- (1,800)
Maintenance	- (4,100)
Reserves for Replacement	- (4,100)
Management/Miscellaneous	<u>-(3,468)</u>
Net Operating Income	-\$55,892 ÷
Overall Capitalization Rate	<u>-.149</u>
Indicated Market Value	- \$375,000 (rounded)
1991 Equalization Ratio	<u>-x .37</u>
	\$138,750

If the taxes have been paid, the amount paid on the value in excess of \$138,750 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 II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. 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. RSA 76:17-c I.

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, not the date this decision is received. 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bryan J. Stevens, Esq., Counsel for Bradford Realty Trust, Taxpayer; and Mary E. Pinkham-Langer, Agent for the Town of Bradford.

Dated: November 17, 1994

Valerie B. Lanigan, Clerk

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ORDER

This Order responds to the Town's Motion for Reconsideration (Town's Motion) and the Taxpayer's Motion to compel refund of the 1991 ordered abatement. For the reasons that follow, the board denies the Town's Motion and orders the Town to refund the Taxpayer within twenty (20) days from the date of this Order the abatement contained in the board's decision of November 17, 1994.

In short, the Town's Motion requested the board assert RSA 71-B:16 II (hereafter 71-B) jurisdiction in the 1992 tax year and order the board's 1991 market value finding of \$375,000 be applied to correct for the underassessment (\$287,000) of the Property in 1992. Because the Town had performed a general reassessment in 1992, the subsequent year provisions of RSA 76:17-c and Tax 203.05 precluded the board's 1991 finding from being carried forward to 1992.

While the board's authority is quite broad (Appeal of Wood Flour, Inc., 121 N.H. 991 (1981)), the board declines to assert 71-B authority because the board has consistently held its 71-B authority should only be asserted in

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those cases where the assessing irregularities are so egregious, affect many properties or have a long term effect (such as in improper administration of current use) and where inadequate remedy exists via more specific statutes (such as individual RSA 76:16-a appeals).

In this case both the department of revenue administration (at the reviews following the reassessment) and the selectmen (in the abatement process) reviewed the assessment and reduced it. Granted, the board finds the Taxpayer was less than forthright in not revealing to the Town the existence of a \$400,000 bank appraisal during this process. Nonetheless, the Town had the authority to arrive at its own determination of value in 1992 (RSA 75:1)¹ and, for 1994 and 1995, has the authority to review the assessment, pursuant to RSA 75:8 and 75:1, and revise, pursuant to RSA 76:14 (corrections of improper assessments may be made before the expiration of the tax year), if it determines the assessment is disproportionate. Thus, because the Town had a remedy in 1992 and has one from 1994 forward, the board does not find the situation so egregious to justify exerting jurisdiction.

Further, even if the board did assert jurisdiction, it would review not only 1992 and 1993 but also 1989 and 1990 when the Taxpayer requested an abatement from the Town, was denied and could not perfect an appeal due to timely filing issues. While further market value findings would have to be made for those four years, based on the general evidence received at the two hearings to date the board

suspects any finding of underassessment in 1992 and Page 3
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¹ "Although they (selectmen) have the obligation to consider all evidence that might be submitted to them, the determination of the appraisals remains for them". Town of Hudson v. State Department of Revenue Administration, 118 N.H. 19, 21 (1978).

1993 would be more or less offset by a finding of overassessment in 1989 and 1990.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

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Date:

Valerie B. Lanigan, Clerk

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