

Alan H. and Mary K. Ganz,
Trustees of the GLO Realty Trust

v.

Town of Seabrook

Docket No.: 12798-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$737,200 (land \$198,600; buildings \$538,600) on a 1.08-acre lot with a commercial building (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the equalized value exceeded market value;
- (2) the Taxpayers bought the Property in December 1993 for \$425,000;
- (3) an appraiser estimated a \$440,000 November 1991 value;
- (4) the buildings require significant depreciation for functional obsolescence and deferred maintenance;

(5) it exceeded the value shown by comparable sales;
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- (6) it exceeded the value shown by the income approach;
- (7) the assessment card included errors;
- (8) town-wide commercial properties were disproportionately assessed; and
- (9) the assessment should have been \$425,000.

The Town argued the assessment was proper because:

- (1) the appealed assessment was based on a review of the assessment, and the adjusted assessment addressed the Taxpayers' concerns;
- (2) the building was reassessed using Marshall & Swift with 5% physical depreciation and 28% depreciation to reflect the rent loss due to the economy;
- (3) the land assessment was calculated based on commercial sales for a two-year period;
- (4) it was consistent with the Property's market value based on sales (adjusted Taxpayers'), the income approach (adjusted Taxpayers') and a discounted-cash-flow analysis;
- (5) the Taxpayers' appraiser relied on bank-involved sales and included other questionable adjustments and the appraiser did not inspect all of the Property; and
- (6) the Taxpayers' purchase was not a market sale because it was a bank sale following foreclosure.

After the hearing, the board viewed the Property with both parties present.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$555,500, which equates to a market value estimate of \$550,000.

The board reviewed the parties' information, and we conclude the cost approach, as used by the Town, has inherent drawbacks when valuing small shopping centers during the 1992 tax year because of the market's condition. The Town attempted to reflect the market change by using a 28% economic depreciation, but the board did not agree with that adjustment. Additionally, the Town's cost approach underestimated the Property's depreciation (physical -- overall; functional -- second floor).

The board reviewed the Property's value, using the market approach and the income approach. Basically, we used the information provided by the Taxpayers' appraiser with adjustments as the board deemed appropriate. For example, the appraisal used bank sales and a sale that occurred several years before 1992. The appraiser indicated, however, that comparable B-1 -- 920 LaFayette Road in Seabrook -- was a good comparable for the Property. The 920 LaFayette property, according to the appraiser, was comparable both in quality, construction and location. Unfortunately, the appraiser did not use the 1992 sale of two units at 920 LaFayette. Summarized below is the sales' history of 920 LaFayette Road, including a per-square-foot value from the sales, and an estimate of the Property's value using the per-square-foot value from the 1992 sale.

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920 LaFayette Road

April 1991	\$1,086,000	52,200 s.f.	\$20.80/s.f.
June 1992	\$ 558,000	15,800 s.f.	\$35.30/s.f.

Property

1st floor	13,109 s.f.*	x	\$35.20/s.f.	=	\$461,440
2nd floor	7,701 s.f.*	x	\$17.65/s.f.	=	<u>\$135,920</u>
					\$597,360**

*Note: The board had its inspector review the Property's plans to calculate the Property's square footage.

**Note: The total value would be \$551,160 if one uses \$11.65/s.f. for the second floor (33% of first floor rate), which the board considered doing.

The Town's sales information focused on the sale of vacant land or land where the purchaser demolished the existing structures for immediate development. The board could not rely upon these sales. We concluded there was a different market for unimproved properties because purchasers could develop these properties as specifically needed. The appealed Property is an improved property, and the land certainly could not be used for any purpose given the existing structures. Additionally, the Town's land valuation was part of the Town's cost approach, which approach we do not accept here.

The board then reviewed the income analysis presented by the parties, and we found the following to be a representative income analysis with appropriate adjustments as determined by the board.

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Income

Potential Gross Income	\$ 129,893
Vacancy & collection loss (25% first floor, 50% second floor)	<u>\$ - 36,823</u>
Effective Gross Income	\$ 93,070 (EGI)

Expenses

Maintenance & repair (based on tax return)	\$13,470
Utilities (estimate) (only for common areas; remainder paid by tenants)	\$ 1,000
Insurance	\$ 1,830
Management (5%)	\$ 4,655
Reserve (2%)	\$ 1,860
Miscellaneous (2%)	<u>\$ 1,860</u>
	\$24,675 (Expenses)

Net Operating Income

\$ 93,070 (EGI)
<u>\$ - 24,675</u> (Expenses)
\$ 68,395 (rounded \$68,400)(NOI)

Capitalization Rate

.125 (estimated by Taxpayers' appraiser)
<u>.0034</u> (tax rate because taxes not expensed by board)
.1284

Value Estimate

$$\$68,400 \text{ (NOI)} \div .1284 \text{ (cap rate)} = \$532,710 \text{ (value)}$$

The two approaches indicate the Property had a value of between \$597,360 and \$532,710. The board has chosen the figure of \$550,000 as being representative of the Property's value. This number was then multiplied by 1.01, which was the revenue department's equalization ratio for 1992.

In addition to the calculations above, the board makes the following observations about the Property to support the board's decision.

1) The board viewed the Property, and quite frankly, despite having written directions, we passed the Property twice. It was difficult to find the Property because the area is characterized by a varied assortment of commercial properties from single-unit buildings to converted homes to other multi-unit buildings. Additionally, the Property is located sufficiently back from the road, so that the adjacent gas station obscures the public's view of the Property as one drives northerly on Route 1. Thus, the Property has significantly impaired location and visibility. The board noted that other larger shopping centers were able to, in essence, create their own desirable locations due to their sizes; this was seen with some of the much larger shopping centers that had anchor tenants. This Property, however, is unable to establish that kind of identity and lies in relative obscurity in the mish-mash of commercial properties along Route 1.

2) The Property has experienced a significant problem with vacancies on both the first and the second floors. The Taxpayers have made reasonable attempts to rent the Property, and certainly, the failure to be able to find good tenants for the Property indicate the Property has a rental problem that is attributable to the Property not the management. The Taxpayers' appraiser discussed the existing tenants (as of November 14, 1991) as high-risk tenants, and the existing tenants in late 1991 certainly supported this conclusion. Retailers such as the Dollar Saver Discount and Tattoo Mania demonstrate that this is not a high-scale rental property with low-risk renters.

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3) The board agrees with the Taxpayers that renting the second floor will be difficult, and therefore, significant reductions were warranted to either the per-square-foot value of the second floor or to the rent attributable to the second floor. We have made these adjustments in our sales and income analysis above.

If the taxes have been paid, the amount paid on the value in excess of \$555,500 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1993 and 1994. 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 thirty (30) 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 in 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

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limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board

denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alan H. and Mary K. Ganz, Taxpayers; and Chairman, Selectmen of Seabrook.

Dated: November 2, 1995

Valerie B. Lanigan, Clerk

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