Matthew Locke-Trustee
Springbrook Realty Trust

v.

Town of Northwood

Docket No.: 12868-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $331,900 (land $92,950; buildings $238,950) on a 4-acre lot with a house containing 5 apartments and a separate building containing 8 units (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) an appraisal performed by RPA Associates (RPA appraisal) estimates the market value of the Property as of April 1992 at $225,000;

(2) a second appraisal performed by Capital Appraisal Associates (Capital appraisal) estimates the market value as of April 1992 at $175,000; and

(3) the market value for multi-family properties did not level off in 1992 as it did for single-family properties and thus sales continued to decline.

The Town argued the assessment was proper because similar assessment methodology was applied to the Property as was applied to other properties in Town.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $256,000 based on a market value finding of $200,000 and the Town's 1992 equalization ratio of 1.28.

In this case the board was presented with the three approaches to value: the cost approach contained in the Town's assessment-record card, and the market and income approaches contained in the two appraisals done for the Taxpayer.

The board places little weight on the Town's property assessment-record card because: 1) the Property is an income producing property and is best valued by the income approach; and 2) while similar methodology was used throughout the Town in the replacement cost of the improvements, the Town was unable to explain whether adequate economic depreciation had been given.

After reviewing the two appraisals prepared for the Taxpayer, the board gives the most weight to the Capital appraisal because it was as of the date of appeal while the RPA appraisal estimated 1989 market value. The board did review the RPA appraisal for supporting documentation and evidence.

The board places most weight on the income approach because the Property is an income producing property and investors would largely consider the

Property's income capability in determining the price to be paid for the Property.

The Capital appraisal's market approach is given less weight because six of the seven sales used were bank related sales. While there was testimony that for this type of property bank sales were the vast majority of all the transactions during that time period, the board finds that the market value for the Property is higher than those sales would indicate. Banks during this time period in an effort to find investors for such properties sold them at a price so they would move quickly and be able to reduce their real estate portfolio. The board has consistently held that bank-related sales do not meet the definition of market value as banks have generally different and greater motivation to sell than a private owner has.

Consequently the board finds the income approach to be the most appropriate approach to value. In this case the board finds the gross potential income and the vacancy rate as contained in the Capital appraisal to be reasonable and based on market evidence. Further the Capital appraisal's expenses are reasonable and are also supported by the expenses contained in the RPA appraisal. However the board has removed real estate taxes from expenses and added the effective tax rate to the capitalization rate. Because the purpose is to estimate market value for determining the Property's tax burden, taxes are more appropriately handled as part of the overall capitalization rate. Further the Capital appraisal did not estimate reserve for replacements in its expenses. Reviewing the RPA appraisal and based on the board's general experience, a replacement for reserve estimate of 5% of the effective gross income is reasonable.

Calculations of the above findings are summarized as follows.

Gross Potential Income	$49,800

Vacancy (10%)	- 4,980
Effective Gross Income	$44,820
Expenses including replacement for reserve	-13,874
Net Operating Income	$30,946

The Capital appraisal determined a direct capitalization rate of 16.16% based on sales of similar properties. However, as the board has already indicated many of these sales were bank sales, and, thus, the indicated capitalization rate would be affected by the sales not qualifying as market value sales. Further the wide range of the rates (approximately 10% to 20%) indicates the sales or the net operating income contain factors that are difficult to reliably adjust to be comparable to the subject Property. In short, while direct capitalization is a relatively simple way of deriving a capitalization rate, there are many pitfalls in relying too heavily on it because such rates can quickly become obsolete or in the first place not be comparable to the Property being appraised. The International Association of Assessing Officials, Property Appraisal and Assessment Administration page 270-271 (1990). Based on the board's experience, the board determines that a capitalization rate of 13% (to which is added the effective tax rate of 2.38%) is a reasonable rate for this kind of property. Such a rate reflects a generally high level of risk associated with this type of income producing property and the financing issues and concerns related with multi-family income producing properties at that time.

Equalizing the net operating income of $30,946 by the total capitalization rate of 15.38% (30,946 ÷ .1538) provides an indicated market value of $201,200 ($200,000 rounded). Applying the Town's 1992 equalization ratio of 1.28 results in the proper assessment of $256,000 ($200,000 x 1.28).

If the taxes have been paid, the amount paid on the value in excess of $256,000 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/City 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 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

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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 David Locke, Agent for Matthew Locke, Trustee of Springbrook Realty Trust, Taxpayer; and Chairman, Selectmen of Northwood.

Dated:December 5, 1995

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Valerie B. Lanigan, Clerk

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