

Leo Crotty, Jr.

v.

Town of North Hampton

Docket No.: 13202-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$709,600 (land \$80,850; buildings \$628,750) on a 3.35-acre lot with a warehouse and office building (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 is located next to the Coakley Landfill which causes the Property to not be financiable;
- (2) the Property had a vacancy rate of nearly 50% rather the 15% assumed in the Colt appraisal;
- (3) the assessment was reduced in 1990 and 1993 but not for 1991 and 1992; the Town should have reduced the assessment to the same level for 1992.

The Town argued the assessment was proper because:

- (1) a 1990 appraisal by David F. Colt estimated a market value of \$800,000 relying primarily on the income approach; however, the cost and the market approaches indicated market values in the 1.1 to 1.2 million dollar range;
- (2) revising the Colt income approach by using the building residual method and reducing the expenses, provides an indicated value of \$1,052,000; and
- (3) sales and leases of other properties in close proximity to the Coakley Landfill indicate the landfill has not affected their value;

Board's Rulings

Based on the evidence, we find the correct assessment should be \$483,600. This assessment is based on a market value finding of \$767,600 equalized by the Town's 1992 equalization ratio of .63.

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 71 (10th edition 1991).

While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate, 72; International Association of Assessing Officials, Property Appraisal and Assessment Administration, 108 (1990). 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 the 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).

Given the evidence in this appeal we find the income approach is the most appropriate approach to value. The Property consists of office and warehouse space that is rented and produces an income stream. This type of property is normally purchased for its income producing capabilities, and, thus, the income approach best reflects the market's perspective of this Property. Further because the Property is unique by abutting the Coakley Landfill, any adjustments to sales in the market approach or depreciation in the cost approach is difficult to estimate and quantify. The board finds the uncertainty of financing and risk due to abutting the Coakley Landfill is best measured by increasing the capitalization rate in the income approach.

The board finds the gross operating income contained in the Colt appraisal report is reasonable. A comparison of the Property's rents with general rental data indicates that the contract rents reflect market rents. Further despite testimony by the owner that vacancy has at times reached 50%, the board finds the vacancy of 15% as assumed in the Colt appraisal is reasonable for this type and quality of property.

The board finds the Property's actual expenses minus real estate taxes is similar to the Town's estimate of expenses as a percentage of effective gross income. Because the goal is to determine the proper assessment on which to base the real estate tax, it is more appropriate to consider taxes as part of the overall capitalization rate rather than include them as part of the expenses.

A summary of the income and expense calculations are as follows.

Gross Potential Income	\$161,157
Vacancy at 15%	<u>- 24,173</u>
Effective Gross Income	\$136,984
Expenses	<u>- 34,050</u>
Net Operating Income	\$102,934

The board finds the 10.7% capitalization rate contained in the Colt appraisal does not adequately recognize the Property's proximity to the Coakley landfill. In fact on page 2 of the appraisal report, the appraiser states "the Coakley landfill, located behind the subject property, may affect value and marketability, however, this factor could not be evaluated by the appraiser at this time." The board finds that the uncertainty of the effect of the landfill on the Property and the Property's ability to be financed is a factor that should be recognized and considered in determining its value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). (In arriving at an assessment, the Town must look at all relevant factors.) Any prudent investor investigating purchasing this Property in 1992 would have been well aware of the Coakley Landfill issue, and any bank reviewing the Property for financing would have required substantial testing of the Property to qualify for financing. The board has determined this uncertainty and risk should be included in the capitalization rate and that an increase in the rate by 2% is reasonable.

In determining the capitalization rate by the band of investment technique, the board reviewed reported interest rates for properties such as this type and the average ten-year bond and corporate B stock rates. Based on this review, the board determined the average 1992 mortgage rate was 9.75 for this type of property. The board added 2% to that rate for the Coakley Landfill Page 5
Crotty v. Town of North Hampton
Docket No.: 13202-92PT

proximity which resulted in a mortgage constant of .12418 for the mortgage portion of the rate. The equity portion of the rate was estimated similarly by finding an

average investor's return of 8½% for ten-year bonds and corporate B stocks and by again adding the 2% additional risk with the Coakley Landfill proximity. The board estimated the loan-to-value ratio to be 70% and the equity ratio to be 30%. Based on those calculations, the estimated capitalization rate was determined to be 11.5% (rounded). The 1992 North Hampton effective tax rate was 1.91%. Adding the effective tax rate to the estimated capitalization rate implies an overall rate of 13.41%. A summary of the band of investment capitalization rate calculations are as follows.

Mortgage Constant	$.12418 \times .70 = .0869$
Equity Rate	$.1029 \times .30 = \underline{.0309}$
Capitalization Rate Total	$.1178$ (.1150 rounded)
Effective Tax Rate	$\underline{.0191}$
Overall Capitalization Rate	$.1341$

Dividing the net operating income of \$102,934 by the overall capitalization rate of .1341 produces a market value indication of \$767,600. The board reviewed the Town's reworking of the Colt income approach using the building residual method as contained in the Town's October 31, 1995 letter to the board. The board, however, placed no weight on the Town's indicated value of \$1,052,000 because the capitalization rate applied to the land was the same as that applied to the buildings. Normally the capitalization rate relative to land is less than an improvement rate because it does not include a recapture rate. Further the Town adopted the Colt capitalization rate of 10.7% which as the board has already found did not reflect the effect of the Coakley Landfill on the Property. The Town testified

that sales and leases of properties in proximity to the Coakley

Page 6

Crotty v. Town of North Hampton

Docket No.: 13202-92PT

Landfill had not shown any effect. However the Town did not submit any evidence to support that claim and further did not submit any evidence to refute the

Taxpayer's testimony and history of difficulty in obtaining financing due to the proximity of the Coakley Landfill.

Further the board placed little weight on the Town's property assessment-record card which arrived at an assessment by cost approach. The Town's representative was unable to explain the basis of the calculations and the basis for the assessment being significantly lowered in 1990 and in 1993 but not in 1991 and 1992.

In short the board realizes the Property is a difficult one to value given the various factors that must be considered. However the income approach as outlined by the board arrives at a reasonable value recognizing the income producing capability of the property and the risk associated with being located next to the Coakley Landfill.

If the taxes have been paid, the amount paid on the value in excess of \$483,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. 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

Page 7

Crotty v. Town of North Hampton

Docket No.: 13202-92PT

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

Paul B. Franklin, Member

David D. MacArthur, Temporary

Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Leo Crotty, Jr., Taxpayer; and Chairman, Selectmen of North Hampton.

Dated: December 5, 1995

Valerie B. Lanigan, Clerk

0006

Leo Crotty Jr.

v.

Town of North Hampton

Docket No.: 13202-92PT

ORDER

On October 7, 1994, the board received a motion for rehearing (motion) from the Town. The board denies the motion as the board's order of September 20, 1994 (order) did not misapprehend the facts or the law. (TAX 201.3(d))

North Hampton is one of several communities that by special legislative act have modified the normal statutory tax billing procedures to financially ease the transition from a calendar fiscal year to a June - July fiscal year. Because of the different billing cycle, any such town should explicitly state on which bill the Taxpayer's final tax liability is actually determined.

In this case, the board finds the first and second bills are identical in form and content, both contain the identical RSA 76:11-a information and use the abbreviation "approx." in describing the county, school and town taxes. As such, the Taxpayer did not receive clear notice as to which bill represented his total tax liability. Thus, the board's finding that the second bill establishes the notice of tax is proper.

Crotty v. Town of North Hampton
Docket No.: 13202-92PT

While the board's rules (effective September 1, 1993) were not in effect for the 1992 tax year, the board notes TAX 301.02(c) (copy enclosed), requires a town, such as North Hampton, to specify on the first bill that it establishes the total tax bill liability and notice the abatement process if the first bill is to be determined as the "final tax bill".

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the foregoing order have been mailed this date, postage prepaid, to Leo Crotty Jr., Taxpayer; Chairman, Selectmen of North Hampton.

Date: October 24, 1994

Valerie B. Lanigan, Clerk

0006