Richard L. Balagur and Bukk Carleton

v.

City of Concord

Docket No.: 14705-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 total assessment of $376,900 (land $119,000; buildings $257,900) on 14 residential condominiums located in Edgewood Heights (Lot 110C-3-32 $26,900, Lot 110C-3-33 $27,000; Lot 110C-3-34 $26,900; Lot 110C-3-35 $27,000; Lot 110C-3-36 $26,700; Lot 110C-3-37 $26,900; Lot 110C-3-38 $27,000; Lot 110C-3-39 $26,900; Lot 110C-3-40 $26,900; Lot 110C-3-41 $27,000; Lot 110C-3-42 $26,900; Lot 110C-3-45 $26,900; Lot 110C-3-46 $27,000; Lot 110C-3-47 $26,900) (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.

The Taxpayers argued the assessment was excessive because:

(1) an August 1993 appraisal estimated the per-unit value to be $17,000;

(2) the Property was purchased in September 1993 for $217,000 ($15,500 per unit);

(3) three comparable sales of units within the complex indicate the Property is overassessed;

(4) a recalculation of the City's income approach arrives at a per-unit value of $17,572; and

(5) the market value as of April 1993 was $17,000 per unit.

The Town argued the assessment was proper because:

(1) the majority of the Taxpayer's appraiser's comparable sales are foreclosures or resales by financial institutions which are considered distress sales;

(2) the Taxpayer's appraiser's income approach is in line with the City's indication of value;

(3) based on the income approach to value, the indicated market value of the Property as of April 1993 was $305,000; and

(4) the indicated value when adjusted by the equalization ratio of 124% supports the assessment.

Board's Rulings

Based on the evidence, we find the proper assessed value to be $357,100. This assessed value is based on a market value finding of $288,000 and the City's equalization ratio of 124%.

There are three approaches to value: 1) the cost approach; 2) the comparable-sales approach; and 3) the income approach. The Appraisal of Real Estate at 71 (10th Ed. 1991).

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 Appraisal and Assessment Administration at 108. 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). In this case, the board finds the income approach to be the most appropriate method to estimate value because: (1) the parties agreed that the highest and best use of the Property was as apartment rentals; (2) any potential investor would place significant weight on the Property's income producing capabilities and its return on investment; and (3) the sales available were all FDIC or bank related transactions.

The board finds the cost approach would be difficult to use in this case due to the large economic depreciation that would have to be applied to recognize the general market conditions affecting this type of property. This fact was exemplified by the City's use of 48-54% economic depreciation on the replacement cost of the buildings on the property-assessment cards. Such a depreciation can only be derived through either the market or income approaches and thus those approaches are the more reliable in the first instance.

Based on the evidence, the board finds the sales approach does not produce a reliable estimate of market value because most of the comparable sales submitted involved lending institutions. The board has consistently held that bank sales do not meet the requirements of arm's-length transactions. "An arm's-length transaction is `[a] transaction freely arrived at in the open market, unaffected by abnormal pressure or by the absence of normal competitive negotiation as might be true in the case of a transaction between related parties.´ B. BOYCE, REAL ESTATE APPRAISAL TERMINOLOGY 18 (REV. ED. 1984)." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). Lending institutions are generally more motivated to liquidate their foreclosure portfolio than to hold and manage property for its maximum return. Such actions are not normal market motivations and generally disqualify those transfers as arm's-length. See also Society Hill Merrimack Condominium Association & a. v. Town of Merrimack, 139 N.H. 253, 255 (1994).

The board reviewed the income approach submitted in the Taxpayer's (C.A. Nichols Ltd.) appraisal, the City's income approach and Mr. Balagur's recalculation of the City's income approach. Based on the testimony and evidence, the board gives some weight to some portions of all three income approaches and has calculated the market value by the income approach based on the following assumptions:

1) potential gross income of $78,120 based on market rent of $465 per month;

2) vacancy and credit loss of 15%;

3) expenses estimated at $24,788 and personal property at $5,060; and

4) capitalization rate of 14.2%.

The board discusses each one of these assumptions in the following sections.

Market Rent

After reviewing the rental information contained in the Nichols report and the testimony by the City, the board concludes the rents for these units were generally in the $450 to $475 range. The Property's rents at the time of the Taxpayer's purchase were $450 and within a year were being increased to $465. Thus, the board concludes a market rent of $465 is reasonable.

Vacancy and Credit Loss

Both parties agreed that a 15% vacancy rate was reasonable to account both for actual vacancy and for collection loss.

Expenses

The parties agreed on the condominium fees and insurance estimate at $15,960 and $996 respectively. They disagreed on the inclusion or level of other expenses. The board finds a reasonable estimate for management (inclusive of leasing charges) to be 6% of the effective gross income. This percentage is higher than that suggested by the City because: (1) the Property's actual management charges and leasing fees were higher and appear to have been negotiated reasonably; and (2) the Property (14 rental units) is not as large an economic unit as many rental complexes; thus an estimate of management expenses based on effective gross income needs to be greater. This estimate is still less than that suggested by Mr. Balagur because no documentation was submitted as to the frequency of the turnover and the resulting leasing fees.

Because maintenance expenses and reserves for replacement are so often related, the board reviewed those two expense items collectively. First, because all maintenance exterior to the units is managed by the condominium

fees, the board finds an estimate of 2% of the effective gross income to be reasonable for the interior maintenance. This estimate also comports with the Taxpayer's general statements as to periodic refurbishing costs and miscellaneous repairs. The board, using Marshall Valuation Service as a guide, estimated the reserves necessary for replacement of the short lived real estate items such as dishwashers and floor coverings. Based on that estimate, we find the Taxpayer's estimate of reserves of $2,520 to be reasonable. The board finds the stoves and refrigerators value is more properly deducted from the final indicated market value rather than deducted as an expense from the income stream. Based on the evidence the City's depreciated value for the stoves and refrigerators is proper.

Capitalization Rate

The board finds the City's estimate of the capitalization rate to be reasonable because the City's assumptions were based on market mortgage rates, reasonable anticipated equity yield rates, loan to value ratio, mortgage term and other market related factors.

Summary

The board's estimate of market value by these income approach assumptions is:

Potential gross income		$78,120	
Vacancy - 15%		X.85	
Effective gross income		$66,402	
Expenses:			
Condominium fees	15,960		
Management/leasing fees - 6%	3,984		
Insurance	996		
Maintenance - 2%	1,328		
Reserve for replacement	2,520		

Total expenses		- 24,788
Net operating income	$41,614	
Capitalization rate - .142	÷.142	
Indicated market value	$293,056	
Personal property deduction	5,060	
Real estate market value	$288,000	

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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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard L. Balagur, Representative for the Taxpayers; and Michael J. Ryan, Director of Real Estate Assessments, City of Concord.

Date: July 23, 1996

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Valerie B. Lanigan, Clerk

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v.

City of Concord

Docket No.: 14705-93PT

ORDER

This order responds to the Taxpayers' August 22, 1996 request for reconsideration (Request). The Request fails to state any "good reason" or any issue of law or fact for granting a rehearing. See 541:3. Consequently, the board denies the Taxpayers' Request and the board for clarification responds to the issues raised in the Request.

The Taxpayers disagree with the board as to the proper approach to value. The board in its July 23, 1996 decision (Decision) detailed the basis for choosing the income approach as the best method of market value. However, for argument purposes, even if the board were to agree with the Taxpayers that the sales approach be given significant weight, the board disagrees with the Taxpayers' contention that two arm's-length sales (the Taxpayers' purchase of 14 units from Bonham for $15,500 per unit and the sale of one unit for $16,000) would control finding a value by that method. Other sales information submitted in the C.A. Nichols appraisal (TP Ex. #2) indicated that 24 units sold in November of 1992 for $21,250 per unit. The Taxpayers submitted a reworking of that sales price (TP Ex. #1) to account for the assumable mortgage and other closing cost savings which indicated an adjusted value of $18,454 per unit. This market evidence supports a higher value conclusion than that argued by the Taxpayers although not as high as that found by the board in the income approach. Additionally, the board notes that the C.A. Nichols report itself arrived at a value conclusion range of $270,000 by the market approach to $285,000 by the income approach. Both these indications of value are contrary to the Property's purchase price and the value argued by the Taxpayers.

The Taxpayers also argued the board's rent estimates were aggressive at $465 per month when most units were being rented at $450 per month. The board arrived at its $465 conclusion based upon evidence that the Taxpayers were in the process of converting rents from $450 to $465, and the C.A. Nichols rental comparable #1 having the 2-bedroom units rent being raised to $475 per month. Further, as contained in the C.A. Nichols report on pages 77, 78 and 82, the occupancy rates for the subject units and other units in the same complex ranged from 93% to 100%. While unquestionably, collection losses enter into an overall vacancy rate, the board finds that its assumption of a 10% collection and vacancy loss rate applied to a $465 monthly rent could compensate for any possible (3%) overstatement of the gross rent.

Lastly, the board affirms its Decision's methodology of subtracting the depreciated replacement cost of the appliances from the indicated market value by the income approach. Such methodology recognizes that the income is derived not only from the appliances but also the location of the appliances.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard L. Balagur, Representative for the Taxpayers; and Michael J. Ryan, Director of Real Estate Assessments, City of Concord.

Date: October 24, 1996

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Valerie B. Lanigan, Clerk

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