

D-L-C Investments

v.

City of Claremont

Docket No.: 15127-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1994 assessment of \$2,515,700 on 123 condominium units in the 144-unit Claremont Arms condominium complex (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 was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the units were purchased during several transactions during 1994; the total purchase price of \$871,400 equalized by the City's ratio of 126% (\$1,097,964) would be less than the assessment; and

(2) the Property had significant deferred maintenance (roofs, interiors, etc.).

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The City argued the assessment was proper because:

- (1) arrays of both condominium and multi-family sales occurring in the City 1994 - 1996 generally indicated the assessments were not excessive;
 - (2) however, further review of the market indicated an adjustment should have been made for the first-floor rental concessions and additional economic depreciation based on income information;
 - (3) the units were not all in bad condition but rather varied in condition;
- and
- (4) an analysis of the Taxpayer's income and expense, supported the assessment.

The board's inspector inspected the property, reviewed the property-assessment card, reviewed the parties' exhibits and filed a report with the board. This report concluded the proper assessment should have a market value range of \$1,325,000 to \$1,375,000.

Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$1,732,500. This is based on a market value finding of \$1,375,000 and the City's 1994 equalization ratio of 126% ($\$1,375,000 \times 1.26$).

Highest and Best Use

As with any valuation, the first step is to define the property and its highest and best use. The 123 units under appeal are part of a 144-unit complex known as "Claremont Arms." The entire complex was constructed in 1973 as garden-style apartments and later converted to condominiums in 1987 - 1988.

Because of the condominium conversion, the City assessed each of the 123 units owned by the Taxpayer separately based on market values that were determined during the City's 1990 reassessment.

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While the City is technically correct that each unit could be considered a separately transferrable interest, the board finds the Property's highest and best use in 1993 was as rental apartment units with the long-term potential for possible sales as individual condominiums. The board's conclusion is based on: a) the evidence that the units were being acquired in large groups to be managed as a rental apartment units; and b) the Taxpayer's testimony that to facilitate the repairs needed to be done a singular ownership of most, if not all, of the units was the most economically viable solution to turning the Property around. Further, the Taxpayer testified that at some point in the future when the market improved the individual units did have the potential for sale as condominiums.

Consequently in reviewing the parties' evidence of market value, the board will consider that evidence in the light of the highest and best

determination stated above.

Value

A number of indications of market value were submitted in this case:

- 1) the Taxpayer's purchase of 123 units in 1994 in several transactions with a total purchase price of \$871,400;
 - 2) the 1994 Currier appraisal of 121 units done for CFX Bank of Keene, which estimated a total value of \$1,090,000 or \$9,008 per unit;
 - 3) the City's array of condominium and multi-family sales;
 - 4) the City's discounted cash flow analysis (DCF), which estimated a market value of approximately \$1,700,000 or an assessment of \$2,142,000;
- and
- 5) Mr. Bartlett's (board's investigator) report, which estimated a market value range of \$1,325,000 to \$1,375,000.

1) Purchase Price

The board gives little weight to the Taxpayer's overall purchase price for the various units. Many of the units were purchased at auction from either the City or FDIC. The board has consistently held that bank, FDIC or auction 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). We find that these sales do not reflect the open market competitive negotiations that should occur for sales to be arm's length. See also Society Hill Merrimack Condominium Association & a. v. Town of Merrimack, 139 N.H. 253, 255 (1994) (party proffering bank sale has burden to show the sale was a fair-market sale; tribunal has authority to decide if sale was market sale).

2) Currier Appraisal

The board places little weight on the value indication in the Currier appraisal report due to the apparent double adjustment of the sales comparison approach and the inclusion of the actual taxes in the income approach. The board finds Mr Bartlett's critique, analysis and revision of the Currier appraisal is reasonable and recognizes and adjusts for the appraisal's shortcomings. The board also agrees with the City's criticism of the Currier appraisal's income approach of deducting \$3,000 per unit for interior unit renovations. Based on the Taxpayer's testimony, the interior renovations were approximately \$2,000 - \$2,500 per unit. This testimony of a lower renovation cost is one reason the board has arrived at a market value conclusion at the upper end of Mr. Bartlett's valuation range.

3) City's Sales

The board appreciates receiving what market evidence was available in the City relative to condominium and multi-family properties. However, the

board was unable to place much weight on these sales because they were in all cases significantly smaller properties. Most of the sales were of two-to-four family properties with the largest property having only ten units.

4) City's DCF Analysis

The board reviewed but was unable to give any conclusive weight to the City's discounted cash flow. The board is quite familiar with DCF as an income approach tool in estimating market value and at times has adopted it as a good indication of value. Many of the calculations contained in the City's discounted cash flow were not discernable from the computerized print out provided. The board is often reminded that an appraisal is "a supportable estimate of market value." Thus, it is difficult to find the City's value conclusion is supported by the DCF.

Nonetheless, the board did review the City's DCF and finds many, but not all, of its assumptions are reasonable. The board disagrees with the City's calculation of the reversionary value estimate of \$2,378,722 at the end of the five-year holding period. This calculation is the single largest component of the City's final value conclusion. The City's assumption states the reversionary value is based on 16.1% capitalization of the next year's net operating income. Based on the board's calculations and using those assumptions, the capitalization rate that would be used to arrive at that reversionary value is more in the 10%-to-10.5% rate as opposed to 16.1%. Using the City's assumptions of an 18.1% equity rate and a 10.5% mortgage rate and the City's other loan-to-value and term assumptions, the board finds a future reversionary value after marketing costs of approximately 1.7 million dollars (present value of approximately \$730,000) as opposed to the nearly 2.4 million dollars found by the City. Further, carrying forth the other assumptions in the City's DCF and adding the discounted reversionary value of \$730,000, the board arrives at an indicated market value of approximately

\$1,350,000. These calculations are not intended to form the basis for the board's market value findings. They are solely intended to explain why the board had difficulty understanding and adopting the City's analysis.

5) Mr. Bartlett's Report

The board reviewed and gives considerable weight to Mr. Bartlett's report and its value conclusion. Many of his observations, comments and criticisms are similar to and/or have been adopted by the board in this decision. In short, we find his approach is the most balanced estimate of market value considering the other various indications of market value that were presented. As stated earlier, the board concludes a market value on the high side of Mr. Bartlett's valuation range for two reasons: 1) the Taxpayer's testimony that the interior renovation costs were not as high as were assumed in the Currier appraisal and adopted by Mr. Bartlett in his report; and 2) the future potential for sale of individual units as condominiums.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$1,732,500 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 City has undergone a general reassessment, the City shall also refund any overpayment for 1995 and 1996. Until the City 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.

Rehearing

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

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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, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lynn M. Thomas, Agent for D-L-C Investments, Taxpayer; and Chairman, Board of Assessors, City of Claremont.

Date: January 28, 1997

Valerie B. Lanigan, Clerk

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ORDER

Following the hearing, the board had its inspector review the Property. His report is included with this order. If the parties have any comment to the report, they shall file those comments within 20 days of the clerk's date below. When the 20 days has run, the board will issue the decision.

The parties are also advised to see if the report can be used to resolve this appeal through settlement.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

Certification

I hereby certify that the foregoing order has been mailed, postage prepaid to Lynn M. Thomas, representative for the Taxpayer; and the Chairman, Assessors of Claremont.

Date: October 25, 1996

Valerie B. Lanigan, Clerk