

Michael Shakour

v.

Town of Walpole

Docket No.: 16149-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$156,300 (land \$46,500; buildings \$109,800) on a .75-acre lot with a 4-unit apartment building (the Property). The Taxpayer also owns, but did not appeal, four other properties in the Town with a combined, \$463,900 assessment. 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 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) a sales comparison approach yielded a \$92,760 value;
- (2) on a per-unit value, the equalized assessment exceeded the per-unit market value, and per-unit value was the highest in the Town;
- (3) it exceeded the Property's value as calculated by the income approach;

Page 2

Shakour v. Town of Walpole

Docket No.: 16149-95PT

- (4) the Property was purchased in 1991 for \$110,000, which time trended to 1995 yielded a \$91,000 value; and
- (5) the Property was worth \$94,000, which would result in a \$96,700 assessments.

The Town argued the assessment was appropriate because:

- (1) the Taxpayer's sales approach was flawed because of errors in the area of adjustments to the comparables' condition and location and the use of so many Keene sales;
- (2) an Elm Street 4-unit sold in 1996 for \$150,000, and this sale should have been used;
- (3) the Property's rents have increased since 1991, which demonstrated an increase in value;
- (4) a revised income approach indicated the Property had a higher value than presented by the Taxpayer; and
- (5) the Property was worth between \$135,000 to \$140,000.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$133,900. This is based on a market value finding of \$130,000 and the Town's 1995 equalization ratio of 1.03 ($\$130,000 \times 1.03$).

The board considered both the sales approach and the income approach in estimating the market value of the Property. In both approaches, however, the board had concerns about the lack of detailed knowledge that both the Taxpayer and the Town had as to some aspects of either the subject Property or the comparables. An example is that neither party knew the rents of the Beauregard sales (Taxpayer's comparable sales #1 and #2). Such information would be valuable both in making adjustments in the sales approach and deriving comparable income market data to be used in the income approach. Therefore, the board's determinations of value by both approaches are relatively general in nature and include some assumptions.

Page 3
Shakour v. Town of Walpole
Docket No.: 16149-95PT

Sales Approach

The board finds the two sales in Walpole (the Beauregard sale and the Westberg sale) bracket the Property's value. Regarding the Beauregard sale, the board places most weight on the selectmen's testimony (they had viewed the interior) as to the quality and condition of the Beauregard property at the time of the sale. Based on that testimony, the board finds the Beauregard property was in inferior physical condition at the time of the sale and a positive 10% adjustment to the sale is needed to reflect the Property's superior condition. Also, the board finds the Beauregard sale needs to be adjusted for its location, both for its general location in North Walpole and its specific proximity to an active rail line. The Taxpayer's agent, Mr. Irwin, is entirely correct that income producing property is primarily purchased based on what it can produce for an income stream for the investor. We find a prospective investor would perceive the Beauregard property as an

inferior investment because of the less desirable neighborhood of North Walpole and its proximity to the rail line. These are factors that affect a tenant's decisions in where they will rent and what they are willing to pay. Consequently, the board finds a 10% adjustment is needed for the differences in location. Applying these two positive adjustments to the Beauregard property to make it comparable to the subject results in an indicated value per unit of \$33,275 which multiplied by the Property's four units provides an indicated market value finding of \$133,100.

In a similar fashion, the board compared the sale of the Westberg property, which sold in April 1996 for \$150,000, to the Property. Both parties agreed the Westberg property was in superior condition than the Property. However, neither party had any specifics as to the magnitude of the adjustment, only their opinions. However, the board determines that a 10% reduction to the Westberg sale price is reasonable and provides an indicated value for the Property of approximately \$135,000. The board reviewed the

physical aspects of the two properties (square footage, size of lots, and

Page 4

Shakour v. Town of Walpole

Docket No.: 16149-95PT

other amenities such as garages) and found, while they differed, they were somewhat offsetting in nature. The board was unable to place any significant weight on Mr. Irwin's contention that the Westberg property had significant commercial potential due to the lack of any specific evidence of the immediate neighborhood and the demand for commercial use of the Property.

Consequently, based on the analysis of these two sales the board finds a market value by the sales approach of approximately \$135,000.

Income Approach

The board finds the actual potential gross income (actual rents

multiplied times apartments) of the Property is a reasonable starting point given that there was no evidence that the Property was being rented beyond its market potential. The board finds the Town's reconstructed income approach (Exhibit A) appropriately arrived at the net operating income of \$14,487. The biggest departure of the parties was in their capitalization rates. Both parties submitted reasonable bases for their assumptions in calculating their rates. The board, as a check on these assumptions, performed a direct capitalization calculation from three sales that were submitted in the Taxpayer's Exhibit #1: the Westberg sale, the Beauregard sale, and the sale of the Property itself. Based on the market rents, vacancy, and expense information submitted, primarily by the Taxpayer but also confirmed by the Town in Exhibit A, the board estimated the net operating incomes for all three properties and compared it to their respective sales prices to calculate indicated capitalization rates. (In the case of the Property, the board took the 1995 net operating income of \$14,486 and reduced it by 8% to account for the increase in rents that have occurred since 1991 as testified to by the parties). The result of these calculations provided indicated overall capitalization rates of 10%, 12% and 14% respectively for the Westberg sale, the Taxpayer's Property, and the Beauregard sale. While certainly these calculations are estimates, they do generally track what the board would perceive as the relative risks of these three properties. Based on this

Page 5

Shakour v. Town of Walpole

Docket No.: 16149-95PT

analysis, the board concludes that a capitalization rate of approximately 12% is reasonable for the Property and consequently the Town's rate of 11.8% is appropriate. Therefore, the board finds the town's estimate of value of \$123,000 by the income approach is reasonable.

These two approaches provide an indicated value range of \$123,000 to \$135,000. Based on this analysis, the board finds an market value of \$130,000.

If the taxes have been paid, the amount paid on the value in excess of \$133,900 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 1996. 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 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.

Page 6
Shakour v. Town of Walpole
Docket No.: 16149-95PT

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 David Irwin, Agent for Michael Shakour, Taxpayer; and Chairman, Selectmen of Walpole.

Date: May 8, 1997

Valerie B. Lanigan, Clerk

0006