

Jeremiah Eames

v.

Town of Littleton

Docket No.: 17144-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessments as follows:

\$1,558,600 (land \$495,000; buildings \$1,063,600) on Lot 11, a 6.6-acre lot with hotel/restaurant (Eastgate Motor Inn) ("Eastgate");

\$600 on Lot 33, a vacant 1.0-acre lot;

\$45,000 on Lot 34, a vacant 4.0-acre lot (collectively the "Properties").

The Taxpayer also owns but did not contest a \$15,500 assessment on Lot 19, a vacant 5.69-acre lot.

For the reasons stated below, the appeal for abatements is granted.

The Taxpayer has the burden of showing the assessments were 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 Properties' assessments were higher than the

general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

- (1) the Property is located off Exit 41, a less desirous location to the prime commercial strip off Exit 42;
- Page 2
Eames v. Town of Littleton
Docket No.: 17144-96PT
- (2) the Eastgate's layout is not consistent with current standards of hotel properties;
 - (3) a 10,000 gallon underground fuel tank needs to be removed at an estimated cost of \$15,000;
 - (4) one boiler along with related piping is asbestos covered and must be removed at an estimated cost of \$15,000;
 - (5) an April 1996 appraisal (Blumenthal appraisal) estimated the market value, excluding furniture, fixtures and equipment (FFE) and business value and deducting a cost to cure for the fuel tank and asbestos removal to be \$1,000,000; and
 - (6) the Eastgate is overassessed compared to other motel assessments and compared to sales and available listings of motels in the area.

The Town argued the assessments were proper because:

- (1) the proper method of appraising the Eastgate is the discounted cash flow (DCF) analysis not the direct capitalization approach;
- (2) the appraiser's potential gross income is understated, the operating expenses are excessive, and his treatment of the return on and of the FFE is improper and overstates the contributory value of the Eastgate Motor Inn;
- (3) using the appraiser's numbers and applying correct methods of valuation in two scenarios supports the assessed value; and

(4) the Property is superior to the Continental 93 Travellers Inn.

Board's Rulings

Based on the evidence, the board finds the proper assessment for Lot 11 to be \$1,156,100 based on a market value finding of \$1,122,400 and the Town's 1996 equalization ratio of 1.03 ($\$1,122,400 \times 1.03$). The board finds the Taxpayer did not carry his burden as to the assessments of lots 33 and 34, and thus, the assessments of \$600 and \$45,000 respectively remain.

Initially, the board must express some dismay of the Town's lack of market evidence to support the assessments in general and specifically the depreciations to the buildings. The Town was revalued by Cartographic Associates, Inc., in 1996 and the market data gathered during the reassessment should have been reviewed in defense of the assessment and any pertinent market evidence submitted at the hearing. The board is also concerned that the "consulting assessors" for the Town (former associates of Cartographic) were unable to explain the depreciation on the Property, specifically the lack of any functional or economic depreciation. Their responses were vague as to any income and expense analysis that was performed either on this Property or on income-producing properties in general in the Town at the time of the reassessment that may have formed a basis for such depreciation. While certainly the burden is with the Taxpayer to show that the assessment is disproportionate, municipalities have a preexisting obligation to get the assessment right in the first instance. See RSA 75:1 and see Appeal of City of Nashua, 138 N.H. 261, 266 (1994) (Municipalities have a preexisting obligation to proportionately assess property). When a town, as in this case, is unable to provide market data and analysis to explain the basis of the

Page 3

Eames v. Town of Littleton

Docket No.: 17144-96PT

assessment in the first instance, the Taxpayer's burden is not as great as it would have been if such documentation had been submitted. The Town's defense of its assessment was essentially its report critiquing the Taxpayer's appraisal and associated documents. The board finds that, while such critique is necessary and appropriate, that alone does not replace what should have been the municipality's primary focus of providing evidence that went into creating and/or supporting the calculation of the assessment in the first instance.

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),

Page 4
Eames v. Town of Littleton
Docket No.: 17144-96PT

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 is the most appropriate method by which to estimate Eastgate's value. Eastgate would most likely be purchased for the income that could be derived from the income stream generated by the hotel and restaurant enterprises. The board disagrees with the Town's condemnation of the Taxpayer's use of the direct capitalization approach and of the commingling of the expenses of the two enterprises.

The board finds that either the direct capitalization method or a discounted cash flow (DCF) analysis could be utilized to estimate Eastgate's value. The direct capitalization method utilized by the Taxpayer is entirely appropriate because Eastgate's income and expense levels have been very consistent in recent times and the testimony indicated Eastgate has been reasonably managed. Further, as testified to by the owner, Eastgate's income level has shown steady, moderate growth over the 11 years of the Taxpayer's ownership while other hotels that were more aggressive in their rate increases have had financial difficulty. While a DCF analysis could be used, DCF analyses are generally used for properties that show wide fluctuations in income and expenses over a period of years or for properties that are at the initial development or lease-up stage.

While it would be ideal to have Eastgate's restaurant income and expenses separate from the hotel income and expenses so each enterprise could be separately analyzed, it is understandable that they are not given the integrated nature of the two enterprises and the nonfranchised nature of Eastgate. The board finds the commingling of expenses for the two enterprises does not make the actual numbers unuseful for an income approach analysis; it only requires that any expenses calculated on a percentage basis must be done cognizant of the combined nature of the income and expenses.

The board finds the Taxpayer's analysis using actual historical income and expense information is appropriate in this case. Adequate testimony was provided to substantiate that the income reflects market rates. Also the

testimony indicated the Property was being prudently managed and the actual expenses were reasonable and would be what any prospective purchaser could anticipate having to expend.

Also supporting the use of the Taxpayer's actuals being reflective of market was the Taxpayer's testimony that other lodging properties in this market that attempted to expand or increase their rates too fast or were purchased at too high a value, had failed and either were no longer being operated or had transferred at a distressed price. This testimony is some indication that the Taxpayer is knowledgeable of the market and is making prudent business decisions and managing the Property for the long term.

To be successful in its argument that the actual income and expenses are not reflective of market and that Eastgate was not prudently managed, the Town needed to supply its own market data to show that either the income is low or that the expenses are inordinate. The Town only stated that the expenses appeared excessive based on its consulting assessor's experience and general hospitality valuation data from various hospitality publications. The board finds the Taxpayer's actual expense ratio being higher than those cited by the Town is appropriate given the high percentage of the income being attributable to the restaurant and liquor sales (approximately 49% of gross income) which generally entails higher labor expenses than the hotel portion of the business and additional overhead expenses.

Consequently, the board finds that using the actual 1995 income and expense figures, exclusive of owner's salary, provides a good beginning for performing an income approach estimate of value for Eastgate. In addition to the actual expenses of \$949,024, the board adds two additional items. First, the board agrees with the Taxpayer that a management charge of approximately 5% of gross is reasonable. This has been subsequently borne out by the owner

hiring a husband and wife to operate and manage Eastgate for \$60,000 a year. Second, the board finds the repair and maintenance portion of the expenses for 1995 does not reflect any funds that would be more appropriately accounted for in a replacement for reserve account. Therefore, the board has added a replacement for reserve account at 1.5% of gross. At first glance, this replacement for reserves may appear low; however, given the fact that the gross income is 49% attributable to meals and liquor sales, calculating replacement for reserves on a percentage basis must be tempered for the inflation of the income by the restaurant. The board looked at the short term items that are normally accounted for in replacement for reserves (roofs, boilers, carpets, paving and the various FFE involved in hotel and restaurant property) and estimated that \$17,850 (1.5% x \$1,190,000) is a reasonable estimate for such items given their five-to-twenty year lifespan.

Based on the above findings, an estimate of the net operating income of the Property is summarized as follows:

Income	\$1,190,000
Total Expenses as Detailed by Taxpayer	\$ 939,024
Management (5% of income)	\$ 59,500
Replacement for Reserves (1.5%)	<u>\$ 17,850</u>
Net Operating Income (NOI)	\$ 173,626

The next task is to account for the fact that personal property to some extent contributes to this income stream. One method, as done by the Taxpayer's appraiser and the Town's critique, is to estimate what portion of the income stream is attributable to personal property. The second method is to have the overall capitalization rate account for the fact that the NOI contains income generated from both short-term personal property and real

property. The capitalization rate should be adjusted for that fact, applied to the NOI and then a depreciated replacement cost new of the FFE deducted to result in an estimate for real estate.

The Taxpayer and the Town chose the first method. However, the board has determined both parties significantly overstated the contributory value of the personal property. The Blumenthal appraisal estimate of \$52,575 of income

Page 7
Eames v. Town of Littleton
Docket No.: 17144-96PT

being attributable to personal property equates to a value of almost \$389,000 ($\$52,575 \div .1352$). Similarly, the Town's consulting assessor's estimate of \$32,463 of income attributable to personal property equates to a value of nearly \$232,000 ($\$32,463 \div .14$).

The board has estimated the FFE value by the second method. Because the net operating income of \$173,626 includes income attributable to real estate and to shorter life personal property, the overall capitalization rate needs to reflect both the real estate and personal property components. The board has estimated that, due to the shorter life and generally higher interest rates attributable to personal property, an 18% rate for personal property would be appropriate. Estimating that personal property comprises approximately 15% of the income stream arrives at a weighted rate of .143 as summarized below.

Personal Property (18%)	$18 \times .15 = .027$
Overall Capitalization Rate for Real Estate of	$.1365 \times .85 = \underline{.116}^1$
Combined Overall Capitalization Rate for Real Estate	.143

¹ The board finds the capitalization rate for real estate of 11.25% as presented by the Taxpayer to be reasonable. However, the board has corrected the effective tax rate to .024 based on the Town's actual 1996 tax rate of \$23.42 and the equalization ratio of 1.03 ($\$23.42 \times 1.03 = \24.12) (Source: Department of Revenue Administration's 1996 Equalization Survey.) Thus, the overall capitalization rate for the real estate is .1365 ($.1125 + .024$).

and Personal Property

Applying the weighted overall capitalization rate of .143 to the net operating income provides an indicated market value of the real estate and personal property of \$1,214,200 (rounded).

A depreciated replacement cost of the FFE then needs to be deducted. The Taxpayer estimated the replacement cost new of the motel room FFE and the kitchen and front desk equipment to be \$150,000 while the Town estimated a similar replacement cost new total of \$122,500. Based on the photographs and descriptions of the generally well kept motel rooms and the exceptional dining room facilities, the board concludes that the \$150,000 estimate is reasonable.

This replacement cost new needs to be depreciated to estimate its current market value. No exact testimony was provided as to appropriate depreciation

Page 8
Eames v. Town of Littleton
Docket No.: 17144-96PT

although the Town did assume a 50% reduction in the original cost. The board concludes that this 50% reduction is reasonable, not so much that the Town had any direct knowledge that such was appropriate, but based on the testimony, photographs and age and nature of the personalty involved. (The board's experience has been that often depreciated amounts of such personalty is less than 50% given the quickly depreciating aspect of some of the short-lived items such as linens and furniture, etc.). Thus, the FFE estimate to be deducted is \$75,000 ($\$150,000 \times .50$).

The resulting assessment for Eastgate is calculated as follows:

Market Value of Personalty and Realty	\$1,214,200
FFE Deduction	<u>\$- 75,000</u>
Market Value of Real Estate	\$1,139,200
1996 Equalization Ratio	<u>x 1.03</u>
	\$1,173,400

Further, the board finds this market value estimate is generally supported by the Taxpayer's testimony of his exploration of listing the Property in 1997 at approximately \$1,100,000. The fact that he chose not to list it at that amount is considered by the board but also we recollect some of Mr. Eames' reasons for not listing it included concerns for personnel, the new management team and a personal attachment to the Property and desire to see it continue to be properly managed.

Based on the testimony and evidence, the board concludes that lots 33 and 34 are excess land not integrally necessary for the operation of the Eastgate. Consequently, the board finds the income approach for Eastgate does not capture the value of lots 33 and 34². While the testimony did indicate that lots 33 and 34 were pleasant to be viewed from Eastgate, the board does not find that they are necessary for the financial success and operation of Eastgate.

Page 9
Eames v. Town of Littleton
Docket No.: 17144-96PT

While some testimony was given as to approximately two acres of lots 33 and 34 being wetland, the board finds the Taxpayer did not carry his burden to show that the combined assessment of \$45,600 is disproportionate. The Taxpayer did not prove that the lots could not be developed despite some wetland limitations. The lots' location at an exit off Interstate 93 (albeit not the most commercially developed exit in Littleton) is a positive attribute. Therefore, the board concludes the Taxpayer has not carried the

² The board considers lots 33 and 34 essentially as one estate. The Taxpayer testified that Lot 33 is actually subsumed by Lot 34, the title to Lot 33 having been acquired from an individual who had some interest in the property due to payment of delinquent taxes.

burden on lots 33 and 34, and thus, no abatement is warranted for those lots.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$1,173,400 on Lot 11 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 1997 and 1998. 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.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Jeremiah Eames, Taxpayer; and Chairman, Selectmen of Littleton.

Date: December 15, 1998

Valerie B. Lanigan, Clerk

0006