Jerry's Department Store

v.

City of Nashua

Docket No.: 17610-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of $7,595,200 (land $4,528,800; buildings $3,066,400), on a 12.94-acre lot in a General Business zone with a 109,100 square-foot strip shopping mall (the "Property").

The Taxpayer argued the assessment was excessive because:

(1) the Property was in a distressed state in 1997 because Rich's department store filed bankruptcy in 1996;

(2) the vacancy level was at 60%;

(3) the Taxpayer spent $4,000,000 in renovations and costs of buying out existing leases; and

(4) based on three comparable sales and analysis of actual income, the market value of the Property as of April 1997 was $4,600,000.

Board's Rulings

Following the Taxpayer's representative's ("Mr. Snow") testimony, a motion to dismiss was entered by the City and granted by the board.

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. In short, the board finds the evidence submitted by Mr. Snow was woefully inadequate, had little probative value, and left many questions unanswered. If Mr. Snow had presented any evidence potentially persuasive of a lower assessment, the board would have denied the motion and proceeded with hearing the City's presentation. However, for the following reasons, the board did not find any of the arguments persuasive enough to tip the burden of persuasion to the City.

Overall, Mr. Snow lacked an adequate in-depth knowledge of the Property, its leases and ownership. Further, his lack of being an expert witness exacerbated the shortcomings in his sales and income analysis. The following are examples of shortcomings in Mr. Snow's presentation.

Mr. Snow did not know or include in his analysis the term and date of origin of the contract leases on which his income analysis was based. He did not know two revenue items comprising approximately 16% of the Taxpayer's 1997 gross income for the Property including the two land lease "pads". Mr. Snow was unable to adequately explain the difference between the Staples' and Rich's income in his summary of income and the actuals contained in the 1997

financial statement. He also relied upon the Taxpayer's 1997 and 1998 Internal Revenue returns. However, he was unable to explain the difference between the returns and the financial

statements until questioned by the board. All these indicate his lack of in-depth understanding and analysis of the financial information submitted to him by his client.

Mr. Snow was uncertain as to which stores, other than the Rich's unit, were vacant in 1997 and how those vacancies are reflected in the 1997 income statement.

Mr. Snow assumed his client, Mr. Howard Rich, a principal in Jerry's Department Store, also had an interest in Rich's department store but did not know the details of the relationship. Any relationship could have a bearing on determining whether the existing lease of Rich's department store was an arm's-length lease between disinterested parties. The potential for the lessee and the lessor having a financial relationship is an important factor in determining whether the contract rent was either at, below or above market.

Mr. Snow was aware of the subsequent renovations that occurred to the Rich's store space and its $4,000,000 cost but did not know when exactly it occurred and how much was attributable to either demolition/construction or buying out of existing leases.

Mr. Snow based his argument that the contract rents were market rents on three comparable sale properties for which he also had net operating income figures. The sales and the properties' net operating income information were drawn from an appraisal performed by an appraiser, Mr. Bramley, for another of Mr. Snow's clients. It was clear from the cross examination of Mr. Snow that, while he allowed certain adjustments to the sales would be appropriate, he was not adequately familiar with the sales nor had he performed any analysis to

arrive at a reliable estimate of value. His estimated sales price per square foot was simply an average of the three unadjusted comparable sales.

Mr. Snow submitted some sales and income evidence and a brief analysis of the data. His analysis was not adequately supported or thorough enough to be persuasive. (In fact, as

noted earlier, his lack of knowledge of the Property and its financial data left many unanswered questions.) Further, Mr. Snow admitted he was not an expert witness as an appraiser. Consequently, his testimony was given less weight than it would have had it been received from a qualified appraiser.

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

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Christopher Snow, Representative for Jerry's Department Store, Taxpayer; James M. McNamee, Esq., Counsel for the City of Nashua; and Chairman, Board of Assessors of Nashua.

Date: August 9, 1999

_____
Lynn M. Wheeler, Clerk

0006
board\pfml\17610-97