Maplewood Hotel Properties Inc.

v.

Town of Bethlehem

Docket No.: 17794-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of $2,107,000 on an 18-hole public golf course with a maintenance building and a clubhouse (known as the “Casino”), containing facilities associated with the golf course, a ballroom and kitchen, on 185.53 acres (the "Property"). A summary of the Town’s assessment by property-record card is presented below.

Map/Lot/Card	Acres	Land Assessment	Land Improvement Assessment	Building Improvement Assessment
207/19/1	56.26	$84,500.00	$480,000.00	$796,500.00
207/19/2	(total)			$2,600.00
207/19/3				$1,100.00

207/18	1.54	$14,300.00		$34,500.00	
207/4	127.73	$92,700.00	$600,000.00	$800.00	
Totals	**185.53**	**$191,500.00**	**$1,080,000.00**	**$835,500.00**	**$2,107,000.00**

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

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show 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 Bethlehem area has declined as a resort destination from its heyday many years ago;

(2) the costs of improvements made to the Property in the past are not reflective of its April 1, 1998 value and hence the cost approach is of little import;

(3) the income approach is the most relevant method for valuing an ongoing business concern such as the Property;

(4) the Casino (37,000 square feet) is oversized for its utility as a clubhouse for the golf course and its ballroom facilities are only utilized several times during the year;

(5) the Town’s comparable sales are from central and southern parts of state;

(6) the value of the excess land is minimal because demand for housing is not present in the area;

(7) the $60,000-per-hole improvement value for the golf course is excessive; and

(8) an April 1, 1999 appraisal by Concord Realty Advisors ("Concord Appraisal") indicates a value of $1,180,000 (inclusive of the 20 rooms renovated subsequent to April 1998) and the April 1, 1998 value was certainly no higher than that.

The Town argued the assessment was proper because:

(1) while the Property was sold in 1991 for an estimated sale price of $1,400,000, the transaction was not arm's length and questions remain about the Property's true purchase price;

(2) the Taxpayer never provided the Town information requested regarding the Property's actual income and expenses; and

(3) the cost approach employed conservative estimates of the contributory value of the golf course improvements and the building.

The Town's 1998 level of assessment was .99.

Board's Rulings

Based on the evidence, the board finds the proper assessment is as follows:

Map/Lot/Card	Acres	Land Assessment	Land Improvement Assessment	Building Improvement Assessment
207/19/1	56.26	$84,500.00	$360,000.00	$683,500.00
207/19/2	(total)			$2,600.00
207/19/3				$1,100.00

207/18	1.54	$14,300.00		$34,500.00	
207/4	127.73	$92,700.00	$450,000.00	$800.00	
Totals	**185.53**	**$191,500.00**	**$810,000.00**	**$722,500.00**	**$1,724,000.00**

The board was presented with four bases for estimating the Property's market value: 1) sale of the Property in May 1998 for a recorded consideration price for the real estate of $1,400,000; 2) the Town's assessment totaling $2,107,000; 3) a July 17, 1998 appraisal prepared by Resort Realty Advisors ("Resort Appraisal") which estimated the real estate value at $1,320,000; and 4) the April 1, 1999 Concord Appraisal, which estimated the real estate value at $1,180,000.

In arriving at its ordered assessment, the board reviewed all four value estimates but gave primary weight to various aspects of only the last three. The board was unable to give much weight to the consideration price paid at the time of the 1998 transfer as an indication of market value for several reasons. First, the transfer occurred between related business parties (one of the principals of the grantee corporation was the trustee of the grantor's trust) and, thus, does not meet one of the requirements of an arm's-length transfer. Further, there was conflicting testimony and evidence as to what was the actual price paid and what percentage of interest was transferred.

The board spent considerable time reviewing the balance of the evidence submitted by the Taxpayer and the Town. The board must express its frustration that the Taxpayer submitted

two substantial narrative appraisals during the appeal process and yet, at the hearing, neither one of the appraisers was present. Certainly it is not the board's position to tell parties how to present their case; however, it is difficult for the board to reconcile differences in appraisals without having the appraisers available to explain their assumptions and conclusions. Further complicating the matter, both appraisals were performed subsequent to April 1, 1998, after renovations for the construction of 20 hotel rooms in the Casino had commenced. Nonetheless, with these limitations in mind, the board has reviewed both appraisals, their basic assumptions and value conclusions and given them some weight in its deliberation, as detailed later in this decision.

An additional difficulty is the mix of positive and negative attributes associated with the Property. On the positive side, the property has relatively good quality land with extensive frontage on a state highway and town road. The Property has been attractively developed as a golf course initially designed by the renowned golf course architect, Donald Ross. The primary remaining structure, the Casino (the large Maplewood Hotel burned down in 1964), is an attractive, landmark-type of building. The Casino has been very well maintained and includes many of the original attractive finishes, fireplaces and the like. The golf course has also been reasonably maintained and, although not fully irrigated, has had some capital improvements in its infrastructure in the past decade. Both the Casino building and the land have the capacity for future development when financially feasible. (The board notes renovations started after April 1998 created 20 hotel rooms and improved the kitchen and the functional utility of the lounge/restaurant.)

On the negative side, the Property, operated primarily as a golf course, is located in the northern part of the state, limiting its operating season, and in an area with a relatively low year-round population from which to draw customers. The Property must compete for local golfers with an 18-hole municipal golf course (Bethlehem Country Club) also designed by Donald Ross and also located on Main Street, just one mile from the Property. Further, while Bethlehem has many recreational and seasonal aspects to its economy, there is no large independent draw (e.g., ski area, large hotel, etc.) to attract seasonal customers in large numbers to the area.

It is these very opposing attributes that any prospective purchaser of the Property would weigh and balance in determining what price to pay for the Property and they are the same factors the board must consider in reviewing the submitted valuation estimates.

The two appraisals submitted by the Taxpayer rely heavily on the sales comparison and income approaches, while the Town utilized the cost approach. The board believes several problems make the first two approaches more problematical in this situation than the cost approach.

The income approach based on the existing revenue stream does not necessarily capture all the transferrable value that may exist in the Property because the present revenue stream may not capture all real estate rights that exist. For example, the income stream from the golf course includes certain income from the Casino to the extent it is used as a clubhouse; however, because this building is an over-improvement for a golf course clubhouse, the value of the underutilized

areas having future development potential is not reflected. Further, the expenses incurred as offset to the Casino portion of the income stream are higher than what would normally be associated for a smaller clubhouse because of the large size of the Casino.

The board believes the Property, consisting of approximately 185 acres, contains excess land, over and above what would be needed simply to site and operate a golf course, and that this excess land may have both supplement land value and future development land value. If so, an income approach certainly would not reflect future development value and may not reflect supplemental land value. Neither the Resort Appraisal nor the Concord Appraisal adequately address or value the development potential of either the Casino or the excess land. As a consequence, the board was unable to give substantial weight to their income approach estimates.

The board reviewed the sales information submitted both by the parties, but was unable to place much reliance upon such information as most of the sales were so different in location, size or time. (For example, the Town's two sales occurred in the early 1990s.) Again, while the board finds the Casino is perhaps an over-improvement as a golf course clubhouse, it is still an extensive, well-maintained building that was not adequately adjusted for in the Taxpayer's sales approach.

Nonetheless, based on the general market analysis of golf courses and associated financial information submitted in both appraisals, the board concludes the Property's northern location in the state, and thus, its relatively short golfing season, and the lack of any large hotel or other recreational facility to create a population base for the golf course are factors the Town's

assessment did not adequately account for. To reflect these factors, the board has made several adjustments to the Town's assessment. "Given all the imponderables in the valuation process, '[j]udgement is the touchstone.'" Public Service Company v. Town of Ashland, 117 N.H. 635, 639 (1977).

First, the board has applied an additional 5% functional obsolescence to the Casino to further recognize its current over-improvement for the Property. (This additional 5% obsolescence actually equates to approximately 14% greater reduction in building value because the Town had already depreciated the building to 35% good; the additional 5% reduces it to 30% good [5% ÷ 35% = approximately 14%]).

Second, the board reviewed the Town's cost approach for the golf course improvements contained in Municipality Exhibit B. The $60,000 value applied for each one of the eighteen holes is arrived at by a $75,000-per-hole replacement cost estimate depreciated 20% for age, condition and seasonal use. The board has reviewed Marshall and Swift cost calculation descriptions of golf courses and finds the $75,000 replacement cost estimate before depreciation is reasonable given the golf course terrain, architectural design, size, overall quality, etc. However, the board finds an additional 20% depreciation needs to be applied resulting in a $45,000 per-hole value for two reasons: 1) the short season of the golf course; and 2) the fact the golf course is only partially rather than fully irrigated as Marshall and Swift prices include.

In conclusion, the board believes an assessed value of $1,724,000 is reasonable. This falls between the value established by the Town ($2,107,000) and the two appraisal estimates submitted by the Taxpayer ($1,320,000 and $1,180,000), and while the Town's cost approach is

basically valid, several adjustments are needed to reflect some unique aspects of the Property mentioned above. The sales comparison and income approaches yield some insights, but their usefulness is somewhat limited in this situation. Since the Town's equalization ratio for 1999 is close to unity (.99), and given the general nature of these cost estimates, no further adjustment from market value to assessed value is necessary.

If the taxes have been paid, the amount paid on the value in excess of $1,724,000 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 1999 and 2000. 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to James N. Tamposi, Jr., Esq., Counsel for Maplewood Hotel Properties Inc., Taxpayer; and Chairman, Board of Selectmen of Bethlehem.

Date: December 1, 2000

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Lynn M. Wheeler, Clerk

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