

Interlakes Properties North LLC

v.

Town of Lancaster

Docket No.: 18352-99PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 1999 assessment of \$2,574,850 (land \$1,573,800; buildings \$1,001,050) on a 100-acre parcel with a combination recreational vehicle park/campground, motel, cottages, waterslide, pavilion and support facilities (the “Property”). The Taxpayer also owns, but did not appeal, two other properties in the Town with a combined assessment of \$51,450. 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 Property was purchased for \$2,300,000 in April 1998; approximately \$435,000 of the sale price was attributed to personal property;
- (2) name recognition and business goodwill are part of the purchase but it is difficult to assign a monetary value;
- (3) the Property is a seasonal property because the water and sewer have not been set up for year-round use; and
- (4) the Property's value as of April 1, 1999 was \$1,865,000.

The Town argued the assessment was proper because:

- (1) the Taxpayer got a good deal when purchasing the Property and received favorable financing (100%); and assuming prudent management, the Property's income would indicate a higher market value than the sale price;
- (2) a March 1998 appraisal, prepared for financing purposes, estimated the market value to be \$2,500,000; the appraisal's value did not include some of the Property's amenities such as the water slide, mini golf course, pavilion, store and some of the trailer sites;
- (3) a correction of data in the appraisal supports a higher market value than estimated, somewhere around \$3,000,000; and
- (4) the assessment is fair and the Taxpayer has not carried its burden to show overassessment.

The parties stipulated that the department of revenue administration's 1999 equalization ratio for the Town of .99 reasonably represented the Town's level of assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$2,079,000 based on a

market value finding of \$2,100,000 and the Town's 1999 equalization ratio of .99 (\$2,100,000 x .99). In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the Town may make this allocation in accordance with its assessing practices.

The Property is a difficult one to value with any certainty for a number of reasons including the unique improvements (a large campground and motel facility with associated recreational amenities), its northern location and seasonal nature and the existence of personal property contributing to the income stream of the Property. These factors and others have a bearing on the weight the board gives the various indicators of value submitted by the parties.

The value indicators are: 1) the Taxpayer's purchase of the Property in April 1998 for \$2,300,000 which included the real estate, personal property and goodwill associated with the business; 2); an appraisal prepared by William J. McLean, III (McLean Appraisal) which was performed for financing purposes and estimated a market value of \$2,500,000; and 3) the Town's total assessed value for the Property of \$2,574,850. For the reasons that follow, the board gives more weight to the purchase price of the Property than to either the Town's assessment or the McLean Appraisal.

Purchase Price

Particularly, because the Property is so unique, its recent sale should be carefully considered as evidence of market value. While the sale of a property is not always conclusive evidence of its market value (See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980)), where it is demonstrated that a sale is generally an arm's-length market sale, the sales price is one of the "best indicators of a property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). In this case, the board finds the sale price is the best indicator although a number of factors, that may have affected the price, need to be considered to determine if it is a reliable indication of value. Those factors are: 1) whether the sellers of the Property were unduly motivated in selling; 2) whether the Property had been reasonably managed prior to the sale; 3) whether the Taxpayer's 100% financing of the purchase of the Property affected the sale price; and 4) what amount should be deducted from the sale price for personal property and goodwill related to the business.

First, the board gives some weight to the Town's testimony that the sellers were engrossed in developing another hospitality property in Lancaster and, thus, may have been inordinately motivated in selling the Property. The board agrees with the Town that the seasonal timing of the sale and the fact that the owners needed the equity in the Property to carry out their other development plans may have influenced them in selling the Property for slightly less than had that not been the case. Mitigating this conclusion is the fact that the sellers initially listed the Property at \$2,700,000, and there were active negotiations between the buyer and seller before arriving at the \$2,300,000 sale price. Consequently, while the board finds the sale price was affected by the sellers' motivation to liquidate their equity in the Property, we find it is in the magnitude of no more than 10% due to the evidence of the initial listing price and the active

negotiations between the parties.

Second, the board finds there was a reduction in the Property's income stream the year prior to the sale (1997) due to the owners being occupied with their new inn. However, the Property continued to be well maintained and generally well operated and the Taxpayer, having access to past financial records, had a reasonable sense as to what the income potential of the Property was. Consequently, the board does not find any depressing affect on the sale price due to any "mismanagement."

Third, the board finds the Taxpayer's ability to receive 100% financing for the Property was not a factor that affected the transaction price. The Taxpayer testified it also owned a mobile home park in the Town of Meredith with no related real estate debt and was willing to put up both the Property and the Meredith property as collateral in securing 100% loan financing on the Property. The board finds this is an alternative way of bringing owner equity to the table, in lieu of a down payment, without liquidating fixed assets. As noted during the hearing, the Taxpayer collateralized a \$2,300,000 loan with properties having a collective market value in excess of \$4,000,0000. This fact along with the Taxpayer's ability to obtain 100% financing due to his long-standing relationship with the bank would, if anything, have the effect of inflating the transaction price rather than depressing it. However, the testimony indicated the net effect of full financing and collateralization by both properties was neutral, and thus, we conclude the sale price was not materially impacted by the financing.

Fourth, the board finds the sale involved significant personal property and some goodwill that need to be accounted for in order to estimate the remaining real estate value subject to taxation. The board has reviewed the Taxpayer's estimate of various items on the seller's bill of

sale (Taxpayer Exhibit 1) and finds it is less than conclusive evidence of the actual contributory value of the associated personal property and goodwill. There is no question, given the nature of this property, that various pieces of equipment, fixtures and furniture are necessary for it to operate as an ongoing business. However, the Taxpayer's attempt to estimate the replacement cost and, in some cases, replacement cost less depreciation of various components, overstates their contributory value to the overall value of the on-going business. The board also considered the aggregate value of \$435,000 as estimated by the seller's bill of sale. The bill of sale, as prepared by the seller, contains no break-down or source as to the value of the various equipment and business goodwill. While the value estimate of \$435,000 is not totally unreasonable, the board finds it is a bit high when those personalty components of the ongoing business are compared to the comparatively substantial real estate improvements. The board estimates the non-real estate value to be in the \$300,000 to \$400,000 range or approximately 15% of the value of the ongoing business. This estimate recognizes the operation of the campground and motel is largely dependent on repeat customers and the business' name recognition often described as "goodwill." Estimating the value of personal property and goodwill of an ongoing business such as the Taxpayer's is not an exact science, but the board has arrived at its conclusion based on the evidence submitted in this case and its experience with such properties.¹

¹ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm,

In short, the board estimates the sale price may have been \$150,000 to \$250,000 below market value due to the seller's motivation to sell but that the deduction for personal property and goodwill is in the range of \$300,000 to \$400,000 and, thus, results in a residual real estate value of \$2,100,000.

McLean Appraisal

The board is unable to give much weight to the McLean Appraisal for a number of reasons. First, the appraisal was prepared with the full knowledge of the agreed-upon price of \$2,300,000 and, thus, there may have been some preconceived "target" value on behalf of the appraiser. Second, because the Property is uniquely improved, any analyses by the sales, cost or income approaches are inherently difficult due to its uniqueness. However, the comparable sales analyzed in the appraisal received no adjustments contrary to the appraiser's observation of "the varying amenities offered among the sales" (Appraisal at 49) and contrary to the differences pointed out by the Town which, without further investigation, would warrant at least some adjustment. The appraisal's income approach, which utilized the Property's ongoing income, probably could provide the best indication of market value; however, the appraiser did not estimate and deduct the value of personal property and goodwill from the total ongoing business value. Thus, at a minimum, the appraisal's \$2,500,000 estimate would need to be adjusted for such non-realty items. The board does not agree with the Town's critique of the McLean Appraisal that appropriate adjustments would result in an indicated market value of around

138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

\$3,000,000. Those adjustments are not supported by the marketing history and negotiations leading up to the sale.

Town's Assessed Value

The board also reviewed the Town's assessment and is unable to give it significant weight for a number of reasons. As the Town concedes, the assessment under appeal is based on values arrived at during a reassessment in 1988, modified by a settlement on the land component in 1988, with further modifications for improvements made to the Property since that date and a trending factor of 1.3 applied to all real estate in the Town, including the Property, in 1993. The board reviewed the assessment calculations to determine if customary appraisal principles and depreciations for this type of property had been applied. We conclude that the Town's cost/market approach in valuing the improvements did not recognize the improvements' seasonal nature, both due to the type of business and the lack of winterized water and sewer utilities. There are no significant functional or economic depreciations to the main improvements of the Property to reflect this fact. Also, the manufactured homes owned by the Taxpayer located within the campground appear to be overassessed relative to both what the Taxpayer has been able to sell the units for and how the Town has treated other manufactured homes throughout the Town. (The Town testified that it utilized a 1.5 trending factor versus a 1.3 trending factor in 1993 for manufactured homes.) In short, the board concludes the assessment should have reflected the inherent functional and economic depreciation relative to the replacement cost of the improvements. It is difficult for the board to reliably estimate the appropriate depreciations given the time elapsed since the last town-wide reassessment and the contorted way the assessment has been changed since then. Nonetheless, this review does support the board's

findings of a lower market value.

In conclusion, two often cited observations on determining market value apply in this case. “Given all the imponderables in the valuation process, ‘[j]udgement is the touchstone.’” Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977). “It has been said that ‘the search for “fair market value” is a snipe hunt carried on at midnight on a moonless landscape.’” Fusegni v. Portsmouth Housing Auth., 114 N.H. 207, 211 (1974). After a review of all the evidence and weighing the different factors affecting the Property, the board concludes the best estimate of market value as of April 1, 1999 is \$2,100,000 resulting in an assessment of \$2,079,000.

If the taxes have been paid, the amount paid on the value in excess of \$2,079,000 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 2000 and 2001. 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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Interlakes Properties North LLC, Taxpayer; and Chairman, Selectmen of Lancaster.

Date: January 24, 2002

Lisa M. Moquin, Clerk