

Joan Brassill Living Trust

v.

Town of Gorham

Docket No.: 19734-02PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$623,800 (land \$182,900; buildings \$440,900) on a 1.1-acre lot with a 36-room motel known as the “Top Notch Motel” (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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, 138 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer was represented by its “agent,” Mark Lutter (“Lutter”). Sally A. Brassill, the daughter of the beneficiary (Joan Brassill) and manager of the motel, was also present and

testified on behalf of the Taxpayer. The Town was represented by its contract assessor, Andy Blais (“Blais”). Also in attendance was Diane Labbe, the Town’s Administrative Assistant.

The Taxpayer argued the assessment was excessive because:

- (1) comparisons to other motel properties, when sale prices are properly adjusted, indicate the Property is overassessed (see Taxpayer Exhibit 1, p. 6);
- (2) an income approach, using three years of actual financial information with some adjustments, also indicates the Property is overassessed (see Taxpayer Exhibit 1, p. 7);
- (3) the Property had considerable “deferred maintenance” due to the poor condition of the windows and the ceilings in most of the rooms and a roof that needed replacement;
- (4) it is appropriate to include 2001 information in the income approach, even though there was a drop in income in that year due to the impact of “9/11,” because an investor valuing the Property as of the assessment date (April 1, 2002) would have considered the impact of this development; and
- (4) the assessment should be abated to \$500,000.

The Town argued the assessment was proper because:

- (1) the contract assessor inspected the Property and this inspection, as well as the submitted photographs, indicates the condition is relatively good;
- (2) while reported income dropped in 2001 somewhat (by about 6%), perhaps due to the impact of “9/11,” it rebounded in 2002 indicating 2001 was not a reliable year on which to base a value using the income approach;
- (3) in addition, the use of this approach by the Taxpayer’s agent raised a number of questions that were not answered, diminishing the reliability of the conclusions based upon his assumptions;

- (4) the market for “mom and pop” motels like the Property includes people who wish to live in the area, and in these circumstances, the income approach, which assumes purer investment motivations, may be less valid than the market approach (based on sales comparisons);
- (5) the Town believes the market approach is the best indicator of value for this Property;
- (6) the Town’s own analysis, based on the market, income and cost approaches (contained in the Town’s “Prehearing Statement”), suggests the Property is underassessed rather than overassessed;
- (7) assessment “equity,” based on a comparison of other motel properties in the Town and assessments per room, also supports the assessment; and
- (8) the Taxpayer failed to sustain its burden of proving the Property was disproportionately assessed.

Neither party challenged the department of revenue’s equalization ratio of 100% for tax year 2002.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

Mr. Lutter utilized two approaches to value in arriving at an estimate of the Property’s market value of \$500,000, the income approach and the comparable sales approach. Mr. Blais utilized a cost approach, a market approach and also an income approach (based on “reconstructed” information) to determine the Property was in fact underassessed. The board finds, based on the evidence submitted by both the Taxpayer and the Town, that the market approach is the best indicator of value of the Property. While there are three approaches to value, not all three approaches are of equal import in every situation. Appraisal Institute, The Appraisal of Real Estate, 62 (12th Ed. 2001); International Association of Assessing Officers,

Property Appraisal and Assessment Administration, 108 (1990). 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), and the tribunal that is reviewing valuation is authorized to use one valuation method, such as the market (comparable sales) approach, based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

Market Approach

Mr. Lutter testified to one February 2001 foreclosure sale (Northern Peaks Motel) and four comparable sales in arriving at his estimate of \$468,000 by the market approach. Mr. Blais utilized four comparables and testified the sales data supported the assessment of the Property. (Comparables 2 and 3 were sales of the Northern Peaks Motel in February, 2000 and March, 2005 which bracketed the foreclosure sale and arrived at a value per unit for each sale date.)

The board has reviewed all of the comparable sales evidence in depth and has determined (as did the parties) that the most comparable sale was the Mount Madison Motel (“Mount Madison”) which sold in August 2002 for \$625,000 (Lutter Comparable #2 and Blais Comparable #1). The parties disagreed as to the adjustments to be made to this sale however. Among other things (as detailed in Taxpayer Exhibit 1), Mr. Lutter and Ms. Brassill testified the Mount Madison was open year-round, was in a better location at a signalized location (junction of Routes 2 and 16), and had access to snowmobile trails. Mr. Lutter indicated the sale price included personal property and a business value. However, no evidence was submitted to support this assertion. Mr. Lutter merely attributed an estimated 15% of the purchase price for the business value and also deducted a value for the personal property based on his review of a cost manual, Marshall and Swift.

Mr. Blais indicated Mount Madison was purchased through a private sale (although it had been on the market previously through a realtor). He discussed the property with the owner who indicated only 14 units can be open in the winter (of which Mr. Lutter had no knowledge) and the snowmobile trail is 1,000 feet away. Further, although Mount Madison is at a signalized intersection, the Berlin mills are located off Route 16 and the sounds of trucks traversing and “braking down” is an impediment to the property. Mr. Blais stated the railroad is also a major impediment to the business, the tracks being 50 to 60 feet from the motel. According to Mr. Blais, trains pass through at 10:00 a.m., 2:00 p.m. and 4:00 a.m. and the owner indicated he often loses clientele after one night’s stay at his motel because of these distractions and they often relocate to the Top Notch Motel (facts not disputed by the Taxpayer). Mr. Blais performed an analysis of the Mount Madison sale, adjusted for time at 0.75% per month, allowed a 10% economic adjustment for the railroad and subtracted 10% for furniture and fixtures to arrive an indicated value per unit of \$18,750.¹ This suggests an indicated market value for the Property of \$675,000 (36 units x \$18,750).

Mr. Lutter also submitted (on page 28B of Taxpayer Exhibit 1) a page from a seasonal magazine wherein he highlighted the Mount Madison as having 33 units (as opposed to 32 utilized by Mr. Blais). First, if this adjustment was made, it would have only a minor effect on the indicated value per unit (\$18,190). Further, a review of page 28B shows it also has a listing for the Property. The board noted at the hearing that the Property’s advertised room rates were higher than Mount Madison. If, in fact, the Property’s location and condition were inferior to Mount Madison, one would assume the rates would be either lower or more competitive.

¹ There is a slight error in Mr. Blais’ calculation of the value per unit. See Municipality’s Prehearing Statement, Market Approach.

Of the other sales used by Mr. Lutter, Comparable #1 (“Shakespeare Inn”) was adjusted for personal property and a 15% business value. Mr. Lutter submitted a copy of the PA34 filed on this property which indicated a value for furnishings and inventory, but no mention of a business value. Further, Mr. Blais testified the name of the motel was changed from Paquette’s because of prior creditor problems. In these circumstances, a business value is implausible.

The sale of Mr. Lutter’s Comparable #3 (“Naturally NH Healthfully Yours Resort”) was questionable as to its arm’s-length nature. Mr. Lutter spoke to the buyer who would not confirm a business value or furnishings. In this case, Mr. Lutter stated he did not “pull out” a business value on this sale because the buyer was a realtor.

Mr. Lutter considered Comparable #4 (“Jefferson Notch”) his least comparable sale. Even though the buyer attributed no business value to the sale as stated, Mr. Lutter reduced the sale price by 15%. The board finds Mr. Lutter had insufficient knowledge of the comparable sales to support the adoption of a business value adjustment.

Mr. Blais also utilized one sale in the Town of Carroll (Comparable #4 – The “Profile” Motel). Adjustments were made for time, age/condition and furniture and fixtures. The Profile is a smaller motel (14 units) thus resulting in a substantially higher per-unit value and little weight was given to this comparable by Mr. Blais.

For all of the above reasons, the board finds the best indicator of value is the Mount Madison which, when adjusted, supports the assessment of the Property.

The board has reviewed but has given no weight to the income and cost approaches to value for the reasons discussed below.

Income Approach

Stabilized Income

Mr. Lutter used an average total income based on the actual income for 1999, 2000 and 2001. He indicated that the 9/11 attacks had a negative impact on the Property's income as it did with the market overall. Mr. Blais analyzed the income stream from the years 2001, 2002 and 2003. While Mr. Lutter's argument that a prospective purchaser would not have data available for years subsequent to April 2002 has merit, the estimated income used by Mr. Blais is also supported by the actual income for 1999 and 2000.

Expense Adjustments

Mr. Lutter deducted a \$45,000 expense for the owner's salary. He mainly derived this salary, which included management in the 5% to 10% range, through the use of an internet resource submitted as Taxpayer Exhibit 3 and the U. S. Department of Labor, Bureau of Labor Statistics website (Taxpayer Exhibit 1 on p. 10).

First, the board will address Taxpayer Exhibit 3. The board gives no weight to this document for several reasons. The undated report indicated a median expected salary for a typical "Front Desk Manager – Casino" in Gorham, NH. The document indicates this is a "Basic Salary Report" based on "broad national data, reported exclusively by human resource departments of tens of thousands of employers from all sizes, industries and locations." It further states "[a]lthough these numbers are based on national data, the results are most similar to the data from companies with approximately 1,000 employees. If your company is bigger, smaller or in a unique industry, we strongly recommend using a premium report to ensure the most accurate answer." (Emphasis added.) The web site allows for a personalized report by employer (size, location and industry), background (experience and education) and performance

ratings and level of responsibility; however, Mr. Lutter provided no such report to the board. The Property is a moderate 36-room motel in northern New Hampshire, does not operate as a casino and, according to the testimony, only employed several part-time people in 2002. The board fails to see any relevance to this document.

Regarding Taxpayer Exhibit 1 at p.10, the board also gives little weight to Mr. Lutter's estimate. Again, this document indicated a median wage based on national standards for a "lodging manager," a category substantially different from a small, seasonal motel operation in the North Country. Mr. Lutter's testimony that the imputed owner's salary includes a management fee of 5% to 10% is also without any support and is excessive if, in the income approach, we assume the owner is receiving a salary.

A review of the average expenses listed included additional expenses for "labor and commission" in the amount of \$43,640, "payroll taxes" of \$3,206, along with an expense for "casual labor" in the amount of \$675. Ms. Brassill testified that her responsibilities included bookkeeping, public relations, accounts payables and receivables, landscaping, some housekeeping, laundry and yard work. Additionally, Taxpayer Exhibit 1 indicates Ms. Brassill also regularly works the front desk, handles reservations and cleans rooms. Specifically, the expense item for labor and commission in the year 2000 was significantly lower than in 1999 and 2001. Mr. Lutter testified that Ms. Brassill's mother worked "substantially" in that year. Based on the expenses listed in the income approach, it appears that many of the duties performed by Ms. Brassill, and for which Mr. Lutter wishes to add in an additional "owner's expense" of \$45,000, are also being accomplished by other paid staff or services. In any event, the evidence was not clear and the Taxpayer did not meet its burden of proof on the issue of appropriate expense deductions in its use of the income approach.

Mr. Lutter cited Mount Washington Hotel Preservation Limited Partnership v. Town of Carroll, Docket Nos.: 18306-99PT and 18658-00PT several times in the hearing. In the first instance, he testified that a return of personal property (3% of the gross income) and a return on personal property should be deducted as expense items as was determined in Mount Washington Hotel. Many distinctions can be made between the Property and Mount Washington Hotel, “a high-quality, high-end resort which, coupled with its historic wood-frame construction, results in many unique ongoing operational and maintenance costs.” As the board indicated in that case, estimating the value of an on-going concern is “always difficult and subject to debate.” The board did find the taxpayer’s appraiser’s calculations for “return on and return of” the non-real estate component of the income stream was appropriate in that case. However, an income approach on a 36-room seasonal motel property with furniture, fixtures and equipment (“FFE”) differs substantially from the necessary FFE to set up hotel rooms and operate a full-service, high-end resort hotel with food and lodging. The board finds a reasonable estimate for the value of the personal property should have been deducted from the indicated value derived by the income approach, as Mr. Blais did in his analysis.

There are several items in Mr. Lutter’s expense list which appear should have been accounted for in the reserve for replacements. Specifically, the repairs and maintenance expense for 2001 of \$22,378.66 was to repair (or replace – the testimony was unclear) the boiler. While deducting a 3% for reserve for replacements, Mr. Lutter is also making a deduction for repairs and maintenance of \$11,083, the average of the 1999, 2000, and 2001 expenses for that line item. This amount appears excessive when compared to 1999 and 2000 expenses.

Lastly, when questioned, Mr. Lutter could not account for several of the expense items listed in his analysis, which impacts on his credibility and knowledge to properly perform an

income approach to value. Mr. Lutter is not a certified appraiser and should be wary of extracting data from an accounting performed for other purposes without providing credible testimony to substantiate his own methods.

Capitalization (“CAP”) Rate

Mr. Lutter provided little evidence to support his higher CAP rate. His evidence consisted of including two pages in Taxpayer Exhibit 1 from “Trends PKF Consulting 2004.” Once again, this information is national data and Mr. Lutter provided little support for using it. It is interesting to note, however, on page 12 of Taxpayer Exhibit 1 (second page of Trends PKF Consulting 2004) under the heading “Property Type” that resort properties were selling at the lowest CAP rates – 9.4% in 2002. The article quoted the reason is governed by “supply and demand forces” and the low CAP rate reflected competition among investors for the scarce number of resort properties available for sale. While Gorham, New Hampshire may not be considered a resort town, there is no question the White Mountains and many attractions draw significant number of tourists during the season the Property is open and motel space is at a premium.

The board reviewed the reconstructed expenses used by Mr. Blais and agrees with Mr. Blais that it is difficult to determine a typical year’s operating expenses given all of the variations. Having said that, the board finds a 10% adjustment for management is reasonable for this Property as is the 13% overall CAP rate. Mr. Blais’ personal property deduction from the final value also appears reasonable at 10% given the evidence and type of property.

Cost Approach

Mr. Lutter did not perform a cost approach. Mr. Blais did prepare a cost approach but indicated it appeared very subjective. The board concurs with and does not consider the cost approach to be the appropriate method to value the Property.

Board's Conclusion

Based on all of the evidence submitted, the board finds the Taxpayer failed to prove the Property was disproportionately assessed and therefore the appeal is denied.

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(f). 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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, Post Office Box 735, Derry, New Hampshire 03038, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, New Hampshire 03581.

Date: August 15, 2005

Anne M. Stelmach, Clerk