NH Beta Association of SAE

v.

Town of Durham

Docket No.: 20211-03PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $848,100 (land $320,100; buildings $528,000) on Map 2-11-2 a multi-unit residential property being utilized as a college fraternity (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 parties agreed the board could take official notice of the evidence in the subsequent case heard the same date, Jesse and June Gangwer v. Town of Durham, Docket No. 20216-03PT ("Gangwer appeal"), another fraternity appealed by the Taxpayer's representative,

Mr. Christopher Snow ("Mr. Snow"). The parties also agreed the 2003 level of assessment was 98.6% based on the department of revenue administration's 2003 weighted mean ratio.

The Taxpayer argued the assessment was excessive because:

(1) a July 2002 appraisal ("Brooks appraisal") estimated the market value at $685,000;

(2) the right to use the Property as a fraternity recognized by the University of New Hampshire is a grandfathered right, not a right permitted by zoning;

(3) the SAE fraternity disbanded and, as of 2003, the Property was leased to Tau Kappa Epsilon Fraternity, Inc. ("TKE");

(4) a comparative sales grid prepared by Mr. Snow, utilizing sales drawn from an appraisal presented in the Gangwer appeal, indicates a market value in the $60 to $108 per square foot range; and

(5) the Property is in very poor condition.

The Town argued the assessment was proper because:

(1) the Brooks appraisal incorrectly based its income approach on an occupancy of only 25 students rather than 40 students, a more typical level of occupancy for fraternities in Durham;

(2) the level of occupancy permitted by zoning (two students per 300 square feet habitable floor area) far exceeds the 40 student estimate utilized by the Town;

(3) the comparative sales grid prepared by Mr. Snow should be given little or no weight because Mr. Snow is not a certified appraiser, the adjustments are arbitrary and not documented, and two of the comparables are not fraternities and thus not comparable; and

(4) a triple net income analysis of a privately owned fraternity supports the Town's assessed value.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to show the assessment was disproportionate.

The Taxpayer largely relied upon the value conclusion of the Brooks appraisal. The board agrees with the Town that an occupancy level of approximately 40 students (rather than the 25 relied upon in the Brooks appraisal income approach) is more market related to most fraternities and sororities in Durham. The board finds the Town's knowledge of the general occupancy level of similar properties to be more probative than the brief discussion in the Brooks appraisal relative to its assumption of 25 students. Further, as the Town testified, the estimate of 40 students is significantly less than the maximum allowed by zoning. The 16 students that occupied the Property when leased by TKE is not indicative of the market potential for such property. Both the Town's testimony and evidence contained at page 29 of the Marquis appraisal (part of Taxpayer Exhibit 1 in the Gangwer appeal) supports a market occupancy higher than that exhibited by the TKE occupancy (see also sliding rental lease rate at Article 3 of Lease to TKE ("TKE Lease")).

The board finds additional evidence exists that supports the Town's assessment. First, the board considered the provision of the TKE Lease and finds that if reasonable assumptions are made of an occupancy of approximately 35 to 40 students and reasonable estimates of expenses based both on actuals contained in the Taxpayer's profit and loss statements and customary market expenses, the value estimated by such an income approach indicates the Town's assessment is not excessive. Second, the board agrees with the Town that the triple net lease

(referenced at paragraph 5 of Municipality Exhibit A[1]) of $56,000 a semester (based on a 32-student occupancy), when capitalized, also indicates the Town's assessment is not unreasonable.

The board gives no weight to the value indication of the comparative sales grid prepared by Mr. Snow because Mr. Snow conceded he was not an appraiser and provided no explanation or documentation of the basis and magnitude of the adjustments. Further, two of the properties, while potentially competing for students in the Durham rental market, are not comparable due to their small size.

The board considered the balance of the arguments submitted by Mr. Snow such as the poor condition of the Property and the grandfathered nature of the fraternity occupancy rights but finds Mr. Snow failed to relate how those features of the Property equate to an indicated value less than the assessed value.

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, <u>not the date this decision is received</u>. 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.

[1] The parties agreed the identity of this property should be kept confidential as the Town had obtained the information under the provision that its source would be protected.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Christopher Snow, Property Tax Advisors, Inc., 56 Middle Street, Portsmouth, NH 03801, Taxpayer Representative; and Chairman, Town Council, Town of Durham, 15 Newmarket Road, Durham, NH 03824.

Date: 2/14/06

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Melanie J. Ekstrom, Deputy Clerk