CHERB, LLC

v.

Town of Amherst

Docket No.: 22981-06PT

ORDER

The board received a timely Motion for Reconsideration ("Motion") of the May 21, 2009 Decision filed by the "Taxpayer," asking the board to "recalculate its income approach valuation" of the "Property." The Town filed no response to the Motion. To allow more time to consider the merits of the Motion, however, the board issued a suspension order on June 4, 2009, which is hereby dissolved.

Upon review, the board finds partial merit in the Motion and is therefore issuing the attached Amended and Restated Decision, revising the ordered abatement (to $1,600,000 from $1,640,000). Revision is necessary because of some inadvertent errors regarding several issues pertaining to the income approach and some unintended confusion regarding the comparative grid attached to the original Decision. The board cannot accept the Taxpayer's argument that a much larger abatement is warranted based on the Taxpayer's "determination of value" ($1,428,855) of the Property and does not agree with some of the contentions in the Motion. In particular, the board disagrees with the Motion's incorrect references to the unrecoverable expenses in the Spring and Charbonneau Appraisals and the contention that the board did not take management expenses into account.

The board has revised the comparative grid in the Amended and Restated Decision to make more explicit and correct all of the operating expense adjustments, including the estimated management expenses, replacement reserves, miscellaneous expenses and unrecoverable expenses due to vacant space. The board has also adjusted the capitalization rate slightly (from 8.25% to 8.45%) to reflect the effect of the vacancy factor as suggested in the Motion and consistent with the approach in the Spring Appraisal.

For the parties' benefit, the substantive changes incorporated in the Amended and Restated Decision have been bolded and a number of sections in the original Decision have been deleted as they are no longer applicable.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Mark D. Fernald, Esq., Fernald, Taft, Falby & Little P.A., PO Box 270, Peterborough, NH 03458, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Amherst, PO Box 960, Amherst, NH 03031; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: July 1, 2009

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Melanie J. Ekstrom, Deputy Clerk