Gilbert G. Campbell

v.

City of Dover

Docket Nos.: 23541-07PT/24405-08PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2007 and 2008 assessments of six (6) multi-family buildings:

MAP/LOT	ADDRESS	LAND ASSESSMENT	BUILDING ASSESSMENT	TOTAL ASSESSMENT
40018/000000	55 New Rochester Road	$253,000	$937,500	$1,190,500
40018/B00000	53 New Rochester Road	$252,400	$938,100	$1,190,500
40018/C00000	51 New Rochester Road	$252,900	$937,600	$1,190,500
40018/D00000	49 New Rochester Road	$252,700	$937,800	$1,190,500
40018/E00000	47 New Rochester Road	$255,100	$935,400	$1,190,500
40018/F00000	45 New Rochester Road	$255,700	$934,800	$1,190,500

(collectively, the "Property"). For the reasons stated below, the appeals for abatement are denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) a summary appraisal report prepared by Wesley G. Reeks (the "Reeks Appraisal") indicated a value of $6,300,000 for tax year 2007 and $6,275,000 for tax year 2008;

(2) the Reeks Appraisal relied on the income approach to value in its reconciliation as this type of property would be purchased based on its income capability;

(3) the units are smaller than some of the competing rental properties, generally older and have no amenities other than laundry facilities in each building and paved parking areas;

(4) the market for the units are entry level tenants who are price sensitive and, thus the Taxpayer has to be careful not to price the rents out of the market; to attract tenants, generally no leases are obtained allowing month to month flexibility for the tenants; and

(5) the Property has a 15% to 20% turnover rate which increases the "turnover" expenses of carpet cleaning/replacement, painting, cleaning, etc.

The City argued the assessments were proper because:

(1) a summary appraisal report prepared by Wil Corcoran, City Assessor (the "Corcoran Report") estimated the market value to be $9,500,000 as of April 1, 2007;

(2) the City is a vibrant, seacoast community and the economy does not appear to suffer as it does throughout the state;

(3) apartment properties were increasing in value and stability in 2007;

(4) the Property is adjacent to Willand Pond, a non-motorized family recreation area;

(5) the Property is treated responsibly by the tenants who are typically blue collar workers;

(6) the Property is operating at below market rents;

(7) the Reeks Appraisal used a high and unsupported expense ratio of 47.8% in the income approach to value; and

(8) the Reeks Appraisal sales approach adjusted for unit size on a 1:1 basis with no documentation and contrary to market data the City has obtained.

The parties stipulated to the median levels of assessment of 96.1% and 94.5% for tax years 2007 and 2008 respectively as determined by the department of revenue administration (‘DRA”).

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to carry its burden.

Preliminary Issues

Before proceeding to detailed findings as to the approach and conclusion of market value, a couple general preliminary findings are in order.

First, while both tax years 2007 and 2008 have been appealed, the board concludes its single market value finding is applicable to each year. All evidence submitted indicates the market value for the Property is essentially the same for both tax years. The Reeks Appraisal concluded market values of $6,300,000 and $6,275,000 for tax years 2007 and 2008. This is only a half of a percent difference in value which is statistically insignificant. The Corcoran Report found a market value of $9,500,000 for 2007 and Mr. Corcoran testified that it was also applicable to 2008 as, in his opinion, the market value had not changed. Also, the stipulated median ratios of 96.1% and 94.5% for the two years under appeal indicate less than a 2% change in market value City wide for all types of properties, again a negligible difference.

Second, because the Taxpayer has the burden of proof to show the City’s assessments were disproportionate, the board need only find whether the Taxpayer carried that burden rather than rule on whether the City’s $9,500,000 market value estimate, presented in defense of the assessments is accurate. Consequently, while the board will consider all the evidence submitted, including the Corcoran Report, the board’s findings will focus on whether the Taxpayer’s

$6,300,000 and $6,275,000 market value estimates are supported and reasonable to be able to carry his burden of proof.

Market Value

Both parties estimated market value employing the income and sales approaches. The Reeks Appraisal placed more weight on the income approach with "emphasis… placed on the income capitalization approach since this is an investment property…." The Corcoran Report, in addition to performing an income and sales approach, calculated a gross income multiplier, a method that calculates "the relationship or ratio between the sale price or value of a property and its gross income from rent and other income sources." Appraisal Institute, The Appraisal of Real Estate, 546 (12th ed. 2001). The Corcoran Report gave equal weight to each of the three indications of market value.

Because the Property would be purchased for its investment and income producing capability, the board finds the income approach is the most applicable approach; however, the board agrees with the City that the sales approach and gross income multiplier method, because of existing sales data, are reliable supplemental indications of value.

After considering the Reeks Appraisal, the Corcoran Report and the testimony of all the witnesses, the board has estimated the 2007/2008 market value of the Property by the following direct capitalization income calculation. The board has also summarized its findings of the major components of the income approach, particularly those where the evidence of the parties differed significantly.

Stabilized Pro Forma - Direct Capitalization Approach

Total Rentable Square Feet: 105,840

Potential Gross Income

	Number	**Monthly Rent**	**Annual Income**
Studio Units	6	$500	$36,000
One Bedroom 1st Floor	18	$620	$133,920
One Bedroom Upper Floors	48	$650	$374,400
Two Bedroom 1st Floor	24	$720	$207,360
Two Bedroom Upper Floors	48	$750	$432,000
Laundry and Misc. Income			$20,000
Total Potential Gross Income			$1,203,680
Vacancy and Bad Debt		-5%	$60,184
Effective Gross Income (EGI)			$1,143,496

Expenses		**Stabilized Annual Expense**	**Expense Per Sq. Ft.**	**Expense as % of EGI**
Insurance		$37,044	$0.35	3.24%
Maintenance/Repairs and Related Personnel Costs		$142,884	$1.35	12.50%
Utilities		$155,000	$1.46	13.55%
Contract Services, Payroll & Administrative/Office		$80,437	$0.76	7.03%
Management at 4.5% of EGI		$51,457	$0.49	4.50%
Replacement for Reserves		$31,752	$0.30	2.78%
Total Expenses		$498,574	$4.71	43.60%
Net Operating Income		$644,922		
Overall Capitalization Rate	0.0864			
Indicated Market Value		$7,464,371		
Rounded		**$7,464,000**		
Gross Income Multiplier		6.20		

Potential Gross Income

Reviewing the comparable rentals submitted by both parties and acknowledging the Property has no amenities other than on-site laundry and adequate paved parking (and the Willand Pond Recreational area abutting the Property to the rear), the board finds the potential gross income estimates are more similar to the Reeks Appraisal estimates, with a couple of minor exceptions, than to the overly optimistic estimates of the Corcoran Report. Overall, the board agrees with the Taxpayer's general argument that because the apartment units are predominantly occupied by entry level tenants or retired individuals, the tenants are very price sensitive and thus any market rent estimates for the Property must be mindful of the competing complexes (in particular, those noted by the parties including "Sunnyhurst," "Granite Village" and "White Cliffs"). The board agrees with the owner's observation that the maximum net operating income ("NOI") is achieved by charging the highest rental rates that do not cause tenants to leave the Property and, as a consequence, minimizing the vacancy rate and turnover costs.

The board finds the studio apartments were renting slightly below market based on the few comparables available and has estimated a $500 per month rental rate. The rental rates for the one-bedroom units utilizing the Reeks Appraisal of $650 and $620 appears reasonable compared to the competing properties and considering the differing amenities. However, the board finds the Property's two-bedroom unit rents were below market and market rents are more reasonably estimated at $750 and $720, again based upon reviewing the rents of competing complexes containing slightly larger units with more amenities.

Sufficient testimony and evidence was provided to support the Reeks Appraisal differentiation by $30 for those units that are partially below grade and lack the exterior sliding doors/balconies.

The board finds the market rents estimated in the Corcoran Report were comparable to complexes with significantly more amenities such as dishwashers, swimming pools, tennis courts, clubhouses, fitness centers, playgrounds, etc. and if similar rental rates were sought at the Property, it would likely result in higher vacancy and turnover.

Vacancy/bad debt

The board has utilized 5% vacancy/bad debt as was applied in both the Reeks Appraisal and the Corcoran Report. This rate appears to be reflective of market vacancy/bad debt and slightly higher than the actual rate the Property sees on an annual basis. As testified to by both the owner and the Property's manager, vacancy turnovers are often limited to a week of lost income due to the structured cleaning, repainting and general rehabilitation work that is in place by the owner. Utilization of the 5% vacancy/bad debt rate, being slightly higher than the actual rate, lessens the risk and thus lowers the capitalization rate ultimately utilized in the income approach.

Expenses

The detailed expenses the board employs in the direct capitalization approach are based upon a review of the Reeks Appraisal, Corcoran Report and the Property's actual expenses[1]. The board attempted to find the expense assumption that was most reflective of what a potential purchaser would project based on market indices and historical records. For example, the board's estimate of $155,000 for utilities is significantly less than the Reeks Appraisal. The board's estimate is based on a correlation of the actual and market expenses discussed on pages 28 and 29 of the Corcoran Report and those discussed on page 68 and 69 of the Reeks Appraisal. For this one expense, the board found the Reeks Appraisal estimate to be in excess for both what

[1] However, as noted in Gilbert G. Campbell v. City of Manchester, Docket Nos. 20086-03PT/20796-04PT, (February 16, 2007) p. 10, "[t]he board is cautious in giving too much weight to the Property's expenses as many of them were allocated to the Property from the Taxpayer's overall costs in managing many other units in southern New Hampshire and northern Massachusetts."

the market utility costs would be and indeed what the actual costs were for 2007 as reported in the Corcoran Report. Another example is the board's estimate of maintenance and repairs which is estimated at $1.35 per square foot rather than the Reeks Appraisal $1.50 per square foot (which was in excess of the Property's historical maintenance and repair expenses). One reason the estimate is lower is Mr. Campbell's testimony that the historical repair and maintenance estimates contain some "expensed" short-lived capital items that are normally accounted for in the replacement for reserves expense.

Overall, the board agreed with Mr. Corcoran's testimony that the Reeks Appraisal expense ratio of 51.74% for 2007 and 52.99%[2] for 2008 are high even accounting for the Property's age. The Corcoran Report, at page 31, referenced expense ratios reported by two authorities, the Institute of Real Estate Management and the National Apartment Association, as being in the mid 40% range. The board's estimates of expenses result in an approximate 44% expense ratio which is higher than the Corcoran Report 38.04% ratio and recognizes the age of the Property likely necessitates higher ongoing maintenance expenses.

Capitalization Rate

The parties were nominally different (25 to 50 basis points) on their estimate of the base capitalization rate. The Reeks Appraisal estimated the 2007 rate at 6.75% and the 2008 rate at 6.50% while the Corcoran Report estimated a 2007 base rate at 7.00%. The board finds the Reeks Appraisal 2007 base rate of 6.75% is a reasonable estimate to be applicable to both years, especially mindful of the 5.0% vacancy/bad debt rate being slightly higher than the Property's actual vacancy/bad debt level.

[2] The Reeks Appraisal, without explanation, changed the calculation of the expense ratio in 2008 to be based upon the potential gross income rather than the effective gross income which is the industry standard of comparison. The 52.99% has been calculated by the board by dividing the total expenses of $599,018 by the effective gross income of $1,130,530.

The resulting estimate of market value by the income approach of $7,464,000 is nearly identical to the 2007 and 2008 equalized assessed values of $7,432,882 ($7,143,000 divided by .961) and $7,558,730 ($7,143,000 divided by .945). As a consequence, the board finds the City's assessed values are reasonable and proportionate and the Taxpayer failed to carry his burden.

As a check to the reasonableness of the income approach market value estimate and the City's assessed values, the board has reviewed the sales data submitted by both parties. The assessment equalized indicates a market value on a per unit basis of approximately $51,000 to $52,000. The board was unable to place any weight on the Reeks Appraisal sales approach market value estimate of $46,000 per unit because the physical characteristics adjustments contained at page 48 were based upon Mr. Reek's opinions without any market substantiation or extraction. While appraiser's judgment and experience is, at times, the basis for appraisal adjustments, they should be founded on market data when available. Here, the Corcoran Report, at page 42, presented some compelling market data to refute the Taxpayer's one to one (percentage of square foot difference to percentage in sale price) relationship and adjustment for unit size. Further, as the City pointed out, in addition to the excess adjustment for unit size, both the net and gross adjustments of the Reeks Appraisal sales adjustment chart at page 48 were substantial indicating either the comparables utilized were not reasonably similar to the Property or the adjustments were subjective in nature.

The City submitted an array and brief analysis (Municipality Exhibit B) of 84 apartment building sales that occurred throughout New Hampshire from 2004 through 2008 ("City Apartment Sales"). While certainly not all the sales are directly comparable to the Property, the exhibit gives a broad prospective of the market transactions of generally similar properties. A very limited number of the properties sold for less than the $51,000 to $52,000 range indicated by the City's assessments, while the vast majority of the properties sold in excess of that amount with the average and median price per unit being in the $69,000 to $83,000 per unit range. Consequently, the Property's $51,000 to $52,000 range is entirely consistent with the Property's age, simple architecture and minimal amenities. The City Apartment Sales have only two sales out of the 84 sales that are lower than the Reeks Appraisal $46,000 per unit sales approach estimate. The board finds the Property is in an above average location, well maintained and provides a reliable income stream that does not warrant such a low value per unit estimate as that arrived at in the Reeks Appraisal.

As a further check as to the reasonableness of the City's assessments and the board's income approach estimate, the board has calculated gross income multipliers based on the board's estimate of gross income ($1,203,680 - which is only one to two percent more than either the 2007 or 2008 Reeks Appraisal gross income estimates) and the 2007 and 2008 equalized assessments of $7,432,882 and $7,558,730 and the board's income approach estimate of $7,464,000 rounded. The indicated gross income multipliers of 6.2 to 6.3 are at the low end of the nine gross income multipliers contained in the Corcoran Report at page 45. Again, this metric, being at the low end of the market data spectrum, reflects the Property's age, simple architecture and minimal amenities and supports the board's conclusion the assessments are proportional.

Last, Mr. Campbell testified a motivation for filing the abatement and appeal was the 35% increase in the assessment in 2007 as the result of the City's assessment update. While such an increase is understandably a motivation for an owner to review their assessment, such evidence does not conclusively prove the Property is disproportionally assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The City's update complies with RSA 75:8 and is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages. The board's conclusion the 2007 and 2008 assessments are reasonable and proportional coupled with the 35% increase in assessment from 2006 indicates the Property may have been previously underassessed and that apartment properties were increasing in value appreciably during the 2005 – 2008 time frame. See Corcoran Report, "Basic Market and Economic Information" pp. 14-17.

In conclusion, the board finds the City's assessments reasonably reflect and balance the Property's positive attributes (good economic region, good specific location, well maintained condition, reliable income history, etc.) with its negative features (age, simple architecture, limited amenities, etc.) and, thus, the Taxpayer has failed to carry his burden of proving disproportionality.

The "Requests" received from the Taxpayer are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the Requests, "neither granted nor denied" generally means one of the following:

a. the Request contained multiple requests for which a consistent response could not be given;

b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;

d. the Request was irrelevant; or

e. the Request is specifically addressed in the Decision.

<u>TAXPAYER'S REQUESTS FOR FINDINGS AND RULINGS</u>

1. The subject property includes six parcels of land each of which are improved with a 24 unit apartment property. The complex includes 144 units. The unit mix is 6 studio units, 66 one bedroom units and, 72 two bedroom units.

Granted.

2. Each of the properties is assessed at $1,190,500.00. The collective assessment for 2007 is $7,143.000.00. The City of Dover employed a median equalization ratio of 96.1% for 2007.

Granted.

3. The collective assessment for 2008 is $7,143,000.00. The City of Dover employed a median equalization ratio of 94.5% for 2008.

Granted.

4. The improvements are approximately 38 years of age.

Granted.

5. The unit sizes are small in comparison to modern apartment properties. The studio units are 470 square feet, the one bedroom units are 642 square feet, and the two bedroom units are 720 square feet.

Granted.

6. The income approach to value is the most reliable indicator of value for apartment properties with a stable income history.

Granted.

7. The comparable sales approach is not relevant in this case as the sales selected by both appraisers are not comparable to the subject property.

Denied.

8. The author of the City of Dover's Appraisal report suffers from bias as he is also the Assessor for the City of Dover.

Denied.

9. The City of Dover's Income Approach disregards actual income and expenses in most instances in favor of regional studies and surveys that have little or no relationship to the performance of properties in New Hampshire.

Denied.

10. The subject property is managed by experienced and well trained professionals with specific knowledge of the market, rental rates, and operating costs in Dover, New Hampshire.

Granted.

11. The City of Dover reports turnover to the be 3-5% per year while the industry averages are approximately 40%.

Neither granted nor denied.

12. When comparing net rent, the square foot rent received for the subject is higher than most of the other apartment properties in the Dover market.

Neither granted nor denied.

13. The income figure determined by Wesley Reeks, MAI , although greater than the actual, is a more reliable indicator of market rent for the subject property.

Neither granted nor denied.

14. Michael Reilly is an experienced insurance agent and the actual cost for insurance is the figure that knowledgeable sellers and buyers would use to determine market value.

Denied.

15. Laundry income should not be considered in determining the market value of real estate.

Denied.

16. Find the market value of the property as of April 1, 2007, including laundry income, to be $6,300,000.00.

Denied.

17. Find the market value of the property as of April 1, 2007, not including the capitalized value of laundry income of $214,120.37, to be $6,085,859.63.

Denied.

18. Find the market value of the property as of April 1, 2008, including laundry income, to be $6,275,000.00.

Denied.

19. Find the market value of the property as of April 1, 2008, not including the capitalized value of laundry income of $214,120.37, to be $6,060,879.63.

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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

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: John G. Cronin, Esq., Cronin & Bisson, P.C., 722 Chestnut Street, Manchester, NH 03104, counsel for the Taxpayer; City of Dover, Attn: Mr. Wil Corcoran, 288 Central Avenue, Dover, NH 03820; Walter L. Mitchell, Esq. and Laura A. Spector, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246, counsel for the City; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: April 30, 2010

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Anne M. Stelmach, Clerk