

Northstar Inn and Condominiums, LLC

v.

Town of Waterville Valley

Docket No.: 25255-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” tax year 2009 total abated assessment of \$1,220,800 on the “Property,” a mixed-use building on 1.356 acres of land at 44 Packard Road, comprised of the following three lots: Map 108/Lot 17000 - \$831,300 (land \$211,400; building \$619,900), an inn with 21 bedrooms; Map 108/Lot 17001 - \$194,600, a residential condominium; and Map 108/Lot 17004 - \$194,900, a residential condominium.¹ For the reasons stated below, the appeal for further abatement on the Property is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the total abated assessment on the Property 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 assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

¹ The Taxpayer also owns, but is not appealing, the \$102,500 assessment on a fourth lot, Map 108/Lot 17002, a partially completed residential condominium in the same building; the parties do not dispute this lot was proportionally assessed.

The Taxpayer, represented by its sole member, Thomas Hoyt, argued the total abated assessment on the Property was still excessive because:

- (1) the Taxpayer owns four lots in one building, consisting of an inn with 21 bedrooms and three residential condominiums (one of which was only partially complete as of the assessment date);
- (2) in August, 2009, the combined market value of these four lots was estimated to be \$1 million by Stephen G. Page, a certified general appraiser (the "Page Appraisal," included in Taxpayer Exhibit No. 2);
- (3) as stated in the appeal document, the inn had a market value of \$432,500 and each of the two residential condominiums under appeal had a market value of \$215,000;
- (4) Mr. Hoyt is a licensed real estate broker who has bought and sold many distressed properties and has broad experience in property management; and
- (5) the Property is currently listed for sale with an asking price of \$1.4 million (Taxpayer Exhibit No. 1), a price that includes a fourth condominium unit (owned by an unrelated party with a value estimated at approximately \$200,000), further supporting the conclusion that the Property was overassessed in tax year 2009.

The Town argued the total assessment, as abated, was proper because:

- (1) the Town performed a statistical update in tax year 2009;
- (2) during the mediation process, the Town inspected the Property and abated the value of the inn substantially (from \$967,200 to \$831,300) because the Town concluded the inn warranted additional physical depreciation and a functional obsolescence adjustment (see Municipality Exhibits A and F);

(3) the Town rejected the Page Appraisal for a number of reasons (see Municipality Exhibits E, F and G), noting that its sole intended use was “asset and collateral valuation,” it “bulked” all units together and used improper methodology;

(4) the Taxpayer sold the fourth condominium unit in the building (Map 108/Lot 17003) to an unrelated party in 2007 for \$210,000 and originally listed all four condominiums and the inn at a price of \$2,225,000 in 2011, which also supports the proportionality of the total abated assessment; and

(5) the Taxpayer failed to meet its burden of proving a further abatement is warranted.

The parties agreed the level of assessment in the Town in tax year 2009 was close to 100%, as indicated by the 99.4% median ratio calculated by the department of revenue administration.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving disproportionality. The appeal is therefore denied for the following reasons.

To establish disproportionality, the Taxpayer must show the Property as a whole was assessed disproportionate to market value adjusted by the general level of assessment in the municipality. RSA 75:1; Appeal of Andrews, 136 N.H. 61, 63 (1992). In making market value findings, all relevant factors should be considered, Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975), and the board must determine for itself issues of credibility and the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984); and Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994). Further, to meet the requirements of

RSA 75:1, all property must be appraised “at its full and true value” and at its “best and highest use.” 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 285 (1982).

The Taxpayer attempted to meet its burden of proving disproportionality by relying heavily on the Page Appraisal. In the appeal document and at the hearing, the Taxpayer asserted each of the two completed condominiums had a market value of \$215,000 and the inn had a market value of \$432,500 in tax year 2009. (As noted above, the Town’s assessments on the completed condominium units of \$194,600 and \$194,900 are below these market value estimates.) If the \$215,000 estimated market values of the two completed condominiums and the \$102,500 value of the partially completed unit (see footnote 1) are subtracted from the \$1 million market value estimate in the Page Appraisal, the indicated market value of the inn is approximately \$467,500,² higher than the Taxpayer’s estimate but still well below the abated assessment of \$831,300. The Taxpayer therefore argued the Page Appraisal and its other evidence supported a substantial additional abatement on the inn. The board does not agree.

The board finds the Page Appraisal cannot be accepted at face value for a number of reasons. While Mr. Page concludes the highest and best use of the Property is conversion of the inn to additional residential condominiums units, this conclusion is questionable, to say the least, and is not adequately supported. There is no analysis of the income producing potential of the inn on a stand-alone basis to determine if this conversion scenario would result in a higher market value. Said another way, since Mr. Page did not express an opinion of the market value of the Property as an inn, there is no adequate basis to conclude another use of the Property (full conversion to condominiums) would result in a higher value. The limited and summary financial information

² Because the level of assessment in the Town in tax year 2009 was 99.4%, quite close to 100%, the board has for simplicity disregarded this very slight difference in its discussion of proportionality.

on page 55 and 56 of the Page Appraisal is insufficient to support his conclusion of a necessary change in highest and best use or allow the board to agree the present use of the Property is less profitable and has less value than the alternate scenario presented.

Mr. Page does not provide the relevant financial statements³ but reports the Property had increasing “Net Reported Income (per SF)” in the period from 2005 to 2008 (from a break even position in 2005 to \$6.97 in 2008; see Page Appraisal, p. 56). He does not explain why he strips what he calls “Property Mgmt. and Other activities” (which, by his calculations, total \$9.46 in 2008 and led him to conclude there was an overall loss per square foot of \$2.49) from this income stream or what he believes the Property’s stabilized income to be. Because of this lack of explanation and analysis, the board is unable to accept the conclusion in the Page Appraisal that “[t]he most productive use of the entire building is renovation of the convertible space into residential condominiums and one office condominium, and the sale of these units” (id., p. 58) or give this conclusion any weight.

The Page Appraisal presents a single market value estimate for the inn and three residential condominium units instead of separate market value estimates for each stand alone economic unit. Such an estimate is likely to reflect a “wholesale” or “bulk” value for the Property, not the “market value” that is the standard for ad valorem assessing purposes. (See Bearfoot Creek, LLC v. Bartlett, BTLA Docket Nos. 22045-05PT & 23090-06PT (December 1, 2008).)

Notwithstanding these fundamental problems in the Page Appraisal, the board also reviewed the assumptions made in his discounted cash flow analysis. Mr. Page used a four year

³ Without reviewing such financial information, it is not possible to determine the accuracy of Mr. Page’s ‘per square foot’ calculations, whether he excluded appropriate items (like financing costs) and whether he intermingled income and expenses from the different, mixed uses of the Property.

absorption period, and considered all of the costs associated with carrying the condominium units during their marketing time. However, he did not consider any potential income generated by renting the condominium units during that same time period. This is inconsistent with the Taxpayer's current practice of offering the condominiums for rent and for sale simultaneously and renting some of the space for offices. (See Page Appraisal, p. 55.) Inclusion of this rental income would have increased the value conclusion arrived at using the discounted cash flow approach in the Page Appraisal. Additionally, Mr. Page made a number of very aggressive and questionable assumptions for which there is little or no support, such as an extremely high assumed equity yield rate and very aggressive developer's profit and present value assumptions, all of which have the effect of lowering his estimate of value (to \$1 million).

The Taxpayer chose not to call Mr. Page as a witness to explain or answer questions regarding his appraisal, including the key assumptions he employed. His testimony, if offered, could have addressed at least some of the apparent flaws and unanswered questions underlying his estimate of value.

There is little indication the Page Appraisal considered an accepted alternative approach to value the inn component of the Property -- the sales comparison approach. In the board's experience, the sales comparison approach is frequently used in valuing lodging properties like an inn, because buyers consider the principle of substitution⁴ inherent in this approach. In other words, a potential buyer is likely to consider whether a comparable inn of this size would sell for as little as \$467,500 in 2009 (as indicated by the Taxpayer's arguments). This equates to a value of about \$22,000 per rentable room (assuming a total of 21 rentable rooms), which the board finds is far too low to be credible.

⁴ "According to the principle of substitution, a buyer will not pay more for one property than for another that is equally desirable." The Appraisal Institute, The Appraisal of Real Estate (11th ed. 1996) at p. 43.

The Taxpayer's owner (Mr. Hoyt), who testified at the hearing, is an experienced broker and property manager. When questioned, he acknowledged he did not agree with Mr. Page's alternate development scenario and continues to operate the inn and market the three remaining condominium units for sale because he believes this is more "viable." The board also notes the Property, when it was offered for sale in 2011 (almost two years after the Page Appraisal), does not mention Mr. Page's highest and best use conclusion (full conversion into condominiums) at all as a scenario that would maximize the value of the Property. (See Taxpayer's Exhibit No. 1.)

The board examined the relevance of this listing agreement and finds the Taxpayer's reliance on it is misplaced for several reasons. The listing originally stated an asking price of \$2,225,000 in May, 2011, more than two years after the assessment date. While a listing price does not necessarily equate to market value, a listing by an experienced real estate broker cannot be ignored and gives some general idea of what a 21-room inn and 4 three-bedroom, two-bath condominiums (valued at \$200,000 each) in a very desirable location might have been worth as of the April 1, 2009 assessment date, keeping in mind that this assessment date preceded several years of substantial declines in the economy and the real estate market. (These declines help explain why the listing price was later reduced to \$1.4 million.)

Finally, the board considered the Town's efforts to arrive at a proportional assessment for tax year 2009. The Town's assessor made a physical inspection of the inn during the mediation process and increased the amount of depreciation significantly, allotting 26% for physical depreciation and an additional 5% for functional obsolescence, and reducing the total assessment of the inn by \$135,900 for tax year 2009 (from \$967,200 to \$831,300), as shown in Municipality Exhibits A and F. The Town also noted at the hearing that it recognized the value of the Property was falling over time, as indicated by the "equalized" values shown in Municipality

Exhibit H for tax years 2009, 2010 and 2011. The board finds these steps by the Town to arrive at a proportional assessment were reasonable.

For all these reasons, the appeal for further abatement is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Thomas Hoyt, D/B/A Northstar Inn & Condominium, PO Box 414, Waterville Valley, NH 03215, Taxpayer; Chairman, Board of Selectmen, Town of Waterville Valley, PO Box 500, Waterville Valley, NH 03215; and Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: August 7, 2012

Anne M. Stelmach, Clerk