Exit 17 Real Estate Ltd.

v.

City of Lebanon

Docket No.: 25914-10PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2010 abated assessment of $1,800,000[1] on Map 110/Lot 5, 42 Riverside Drive, a self-storage warehouse facility, consisting of eight "mini-storage" buildings and one office building on 3.2 acres (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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. The board finds the Taxpayer carried this burden.

[1] The tax year 2010 assessment was $1,929,400 (land $612,800; buildings $1,316,600) until the City abated this assessment to $1,800,000 (just prior to the hearing of this appeal on June 27, 2013).

The Taxpayer argued the abated assessment was excessive because:

(1) an appraisal prepared by the Taxpayer's representative, Christopher Snow of Property Tax Advisors Incorporated (the "Snow Appraisal," Taxpayer Exhibit No. 1), estimates the market value of the Property was $1.3 million as of the April 1, 2010 assessment date;

(2) the Property's highest and best use is as a self-storage facility, the buildings are in "average" condition and the location is "average to good";

(3) the mini-storage buildings are neither heated nor air conditioned, but the office that serves this business has these amenities;

(4) the Snow Appraisal bases its market value estimate on self-storage sales and listings (shown in its sales grid, p. 19), concludes the Property should be valued at $35 per square foot (for a $1.3 million total value, rounded) and is also supported by an estimate of value ($1.2 million) based on the income approach;

(5) Taxpayer Exhibit No. 2 shows the $35 per square foot estimate is further supported by the sale of five other self-storage facilities in 2012 which had an unadjusted "Mean Sale Price" of $33 per square foot;

(6) the City's appraisal placed more weight on the income approach than the sales comparison approach and this can lead to an "overvaluation" of a self-storage facility, as stated in an Appraisal Institute publication (Taxpayer Exhibit No. 6); and

(7) based on the analysis and exhibits presented, the assessment should be abated to the $1.3 million market value estimate in the Snow Appraisal adjusted by the level of assessment in the City.

The City argued the assessment, as abated, was proper because:

(1) the Snow Appraisal contains a number of errors (such as adding in property tax expenses and expenses for a sister property in the income approach) that diminish its credibility;

(2) in addition, as documented by the City through its cross-examination of Mr. Snow (Municipality Exhibit A, Tabs B - H), the market data cited in the Snow Appraisal contains inaccuracies and discrepancies, including reported selling prices;

(3) an appraisal prepared by Catherine J. Capron, a certified general appraiser (the "Capron Appraisal," Municipality Exhibit A, Tab A), estimates a $1.8 million market value for the Property;

(3) Ms. Capron has experience appraising warehouse facilities, has specifically researched how best to appraise self-storage properties and the Capron Appraisal is the best evidence of market value;

(4) the Property is in a "prime location" (at Exit 17 of an interstate highway, I-89) with good visibility and this is an important factor in determining its value (Capron Appraisal, p. 21);

(5) Ms. Capron did not use the additional sales in Taxpayer Exhibit No. 2 for the reasons testified to at the hearing, including the fact they occurred in 2012 (well after the April 1, 2010 assessment date), and her conclusions are reasonable and well supported;

(6) the income approach in the Capron Appraisal is better supported and more credible than the Snow Appraisal, because Ms. Capron uses three years of data to arrive at stabilized income and expenses, and Ms. Capron did not err in giving more weight to the income approach; and

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

The parties agreed the level of assessment in the City in tax year 2010 was 97.2%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the market value of the Property in tax year 2010 was $1,800,000 and, when this value is adjusted by the 97.2% level of assessment in the City, the assessment must be abated to $1,749,600. The appeal is therefore granted.

The parties recognize assessments must be based on market value adjusted by the level of assessment in the municipality. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In arriving at a proportional assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). In making market value findings, the board applies its "experience, technical competence and specialized knowledge" to the evidence presented. See RSA 71-B:1; and RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). Further, in making findings where there is conflicting evidence, "judgment is the touchstone." See Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras, 115 N.H. at 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Taxpayer argued the $1.8 million abated assessment was disproportional, relying heavily on the Snow Appraisal which contains Mr. Snow's opinion that the market value of the Property as of the assessment date was only $1.3 million. The board does not agree with this opinion for many of the reasons developed by the City in its cross-examination of Mr. Snow and the City's own evidence of market value in the Capron Appraisal.

The board finds the Capron Appraisal is better supported than the Snow Appraisal. This is somewhat understandable given her experience and training as a professional appraiser and the additional research she performed to develop her value conclusions. As she testified at the hearing, she researched industry publications for valuing storage facilities and also spoke with market participants, including at least one knowledgeable real estate broker.

Both appraisals considered the present use of the Property (as a self-storage facility) to be the highest and best use and both employed the sales comparison and income approaches. Ms. Capron placed more emphasis on the income approach, which Mr. Snow criticized in his presentation.[2] The board does not agree with this criticism and finds the weight placed on the income approach in the Capron Appraisal is reasonable.

In their respective applications of the income approach, Ms. Capron and Mr. Snow reached very similar conclusions regarding effective gross income ($293,483 versus $290,803 per year), but disagreed on the level of estimated operating expenses ($104,744 versus $175,426), which led to disagreements regarding the net income ($188,739 versus $115,377). A large part of the difference in these numbers is traceable to the fact Mr. Snow improperly included real estate taxes as part of his operating expense estimate, which increased this estimate substantially and reduced the net income estimate. Mr. Snow argued the level of taxes is a factor considered by property buyers in the market and therefore that his calculations were proper.

For ad valorem tax purposes the standard, accepted way of accounting for real estate taxes is to adjust the capitalization rate for the tax rate and level of assessment, as Ms. Capron

[2] Mr. Snow relied on an Appraisal Institute publication and provided only several excerpted pages from this document (in Taxpayer Exhibit No. 6, pp. 35-36). The board has reviewed this publication and does not agree with Mr. Snow's argument that it supports a universal finding that the income approach leads to 'overvaluation' of self-storage facilities. Instead, this publication, fairly read, merely argues that the sales comparison approach should be used as a "useful check" on the indication of value using the income approach, including a check on whether the effective rents being charged for the storage space "vary markedly from published rents."

did, rather than adding taxes as an operating expense, as Mr. Snow did. Consequently, the board finds Ms. Capron's income approach estimate to be more credible than Mr. Snow's estimate.

Ms. Capron used a tax adjusted capitalization rate of 10%. (Capron Appraisal, p. 50.) She based this rate on four accepted methods and then added in a tax adjustment. The board finds her estimate is reasonable and well supported. Mr. Snow used a 9.5% capitalization rate which is not materially different but is less well documented. (Cf. Snow Appraisal, p. 17.)

Turning to the sales comparison approach, Ms. Capron and Mr. Snow relied upon the same self-storage facility sales (in Derry, Hampstead and Enfield), but applied different adjustments to them. (Capron Appraisal, p. 27; Snow Appraisal, p. 19.) Both also considered listings of such facilities but gave the listings less weight. The board finds the Capron Appraisal took note of relevant factors such as relative locations and the conditions pertaining to each sale. (Capron Appraisal, p. 29.) On the whole, the board finds Ms. Capron's adjustments and analysis of the relevant market data to be better supported and more reasonable. Ms. Capron then reconciled the indications of value from the sales comparison and income capitalization approaches to conclude the Property had a market value of $1.8 million as of the April 1, 2010 assessment date. (Capron Appraisal, p. 52.) The Taxpayer did not meet its burden of proving this value conclusion was unreasonable or that its own lower estimate of value or an alternate estimate is more reasonably supported by the evidence presented.

In summary, the board finds the $1.8 million market value estimate in the Capron Appraisal is the best evidence of the market value of the Property. To achieve proportionality and apply consisted standards, this $1.8 million market value finding must be adjusted by the agreed-upon 97.2% level of assessment in tax year 2010, resulting in an abated assessment of $1,749,600.

If the taxes have been paid, the amount paid on the value in excess of $1,749,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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, <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(g). Filing a rehearing motion is a prerequisite for appealing t 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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Michele E. LeBrun, Chair

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Albert F. Shamash, 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, representative for the Taxpayer; Shawn M. Tanguay, Esq. and Joshua M. Pantesco, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the City; and Chairman, Board of Assessors, City of Lebanon, 51 North Park Street, Lebanon, NH 03766.

Date: 8/30/13

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Anne M. Stelmach, Clerk