Pleasant View Retirement, LLC

v.

City of Concord

Docket No.: 25916-10PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2010 assessment of $4,340,100 (land $756,000; building $3,584,100) on Map 95/2/12, a senior independent living facility on 41.66 acres (the "Property") located at 227 Pleasant Street.[1] 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 Taxpayer carried this burden.

[1] The Taxpayer also owns, but did not appeal, the 2010 assessment of $263,800 on Map 95/2/13 (4.10 acres of undeveloped land located at 185-203 Pleasant Street). At the hearing, the parties agreed this parcel was proportionately assessed in tax year 2010.

The Taxpayer argued the assessment was excessive because:

(1) the best evidence of market value is an appraisal prepared by Ms. Courtney B. Lees with Province Consulting Group, LLC (Taxpayer Exhibit No. 1, "Lees Appraisal"), who is an experienced real estate appraiser specializing in the valuation of health care facilities;

(2) the Lees Appraisal utilized the income capitalization and sales comparison approaches to value, but relied primarily on the income approach and estimated a $3,100,000 market value of the Property as of April 1, 2010 (after appropriate deductions were made for business value and furniture, fixtures and equipment ("FF&E"));

(3) the appraisal submitted by the City's expert (Mr. Stephen Traub) was flawed as it estimated the rental income too high and operating expenses too low, especially the management fee; and

(4) the Taxpayer carried its burden of proof and the appeal should be granted.

The Town argued the assessment was proper because:

(1) an appraisal prepared by Mr. Stephen G. Traub with Property Valuation Advisors (Municipality Exhibit B, "Traub Appraisal") is the best evidence of market value and is supportive of the assessed value under appeal;

(2) the Traub Appraisal utilized the income capitalization and comparable sales approaches to value and estimated a $4,460,000 market value of the Property as of April 1, 2010 (after appropriate deductions were made for business value and FF&E);

(3) the income utilized in the Lees Appraisal was too low with some "below market" rents; and

(4) the appeal should be denied.

The parties agreed the level of assessment was 99.7% in tax year 2010, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer met its burden of proving disproportionality and the assessment on the Property should be abated to $3,429,700 based on a market value finding of $3,440,000 for tax year 2010. The appeal is therefore granted for the following reasons.

To determine whether the Taxpayer met its burden of proving disproportionality, the board considered and weighed all of the evidence presented, utilizing its "experience, technical competence and specialized knowledge." See former 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 must employ its statutorily countenanced ability to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it.") Further, "judgment is the touchstone" in evaluating the credibility and probative value of any appraisal and other evidence presented. See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975) ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Property in this appeal is a retirement community, commonly referred to as "Pleasant View", located in a historic landmark[2] building formerly the home of Mary Baker Eddy. It is situated on Pleasant Street, in close proximity to the Concord Hospital in an area of medical office buildings and other health care facilities. It is sited on 41.66 acres with 72 apartments ranging from efficiency units to two-bedroom deluxe units and has extensive interior and exterior common areas including "a theatre, large public dining room and associated

[2] "In 1984, it was added to the National Register of Historic Places." (See Traub Appraisal, p. 5).

professionally staffed kitchen, large public living room, a library room, many private offices and a large conference room." (See Traub Appraisal, p. 5). Pleasant View is a senior independent living[3] facility (not an assisted-living facility) and includes in its monthly rental rates the following services: housekeeping, full maintenance, one meal per day, local transportation, utilities, laundry services, parking, activities and 24-hour support. (Id., p. 41.)

In this appeal, both parties submitted appraisals from well qualified experts with many years of experience in valuing real estate. There were many similarities between the two appraisals: both were generally well documented; both used recognized appraisal methodologies to value; and, both utilized the income capitalization and the sales comparison approaches to value, relying primarily on the income capitalization approach in the final reconciliation of value. (See Lees Appraisal, pp. 104-105 and Traub Appraisal, p. 85.)

There are three approaches to value: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate, Ch. 7, p. 130 (13th ed. 2008). In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal reviewing the valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

Upon thorough review of the evidence in this appeal, the board concurs with the Lees Appraisal and the Traub Appraisal and finds the income capitalization approach to be the most appropriate approach to value the Property based upon its highest and best use as a senior independent living facility with ancillary company wide space and usage. The board finds the relative stability of its income and expenses, the quantity and quality of historic financial data

[3] "Independent living facilities are for seniors who are generally in good health and do not need professional assistance or supervision for their daily activities as would be provided at an Assisted Living Facility (ALF) or a Skilled Nursing Facility (SNF)." (See Traub Appraisal, p. 5).

and the likelihood that any potential buyer would purchase the Property for its income potential supports this highest and best use.

The board further concurs with Ms. Lees and Mr. Traub that the sales comparison approach presented in each appraisal does not result in a credible indication of market value and has given it no weight for the following reasons. First, the Property is physically unique in several ways (age, size of units and large common areas, historic features, location, etc.) that make physical comparisons and appropriate adjustments difficult to qualify and quantify. Second, the limited number of properties that sold vary widely in terms of services offered and property type (retirement community, assisted living facility, etc.) and large adjustments would likely be necessary to arrive at an indicated range of value. Finally, the information provided regarding several of the sales utilized raises questions regarding the arm's-length nature of those transactions.

The board reviewed the income approaches presented in the Lees and Traub appraisals in detail and considered the areas where they were in agreement and disagreement. While the parties disagreed greatly on the appropriate method of estimating effective gross income, their final estimates were reasonably similar: Lees Appraisal: $1,891,403 (p. 59) and Traub Appraisal: $1,945,142 (p. 53). Based on the historical income, as well as the income trends provided in both appraisals, the board has arrived at a stabilized income of $1,902,000 which includes the following:

INCOME:	
Effective Gross Rental Income:	$1,800,000
Effective Gross Other Income: 2nd Person	$55,000
Effective Gross Other Income: Personal Purchases	$35,000
Effective Gross Other Income: Other	$12,000
TOTAL EFFECTIVE GROSS INCOME:	**$1,902,000**

Both appraisers applied the following categories of expenses: general and administrative; dietary; housekeeping and laundry; ancillary; property (not including real estate taxes); insurance; management; and reserves for replacement. While Ms. Lees and Mr. Traub utilized very different methods and sources of information to arrive at their estimates of expenses, their overall estimates were reasonably similar: the Lees Appraisal estimated total expenses of $1,483,737 (p. 72), and the Traub Appraisal estimated total expenses at $1,420,310 (p. 56).

The board reviewed the historical expenses and trends in detail, in considering its estimated stabilized expenses and finds stabilized expenses totaling $1,463,300 which yields a net operating income as follows:

EXPENSES:	
General & Administrative:	$270,000
Dietary:	$360,000
Housekeeping & Laundry:	$170,000
Ancillary:	$53,000
Property:	$400,000
Insurance:	$90,000
Management (5%):	$95,100
Reserves for Replacement:	$25,200
Total Expenses:	$1,463,300
NET OPERATING INCOME ("NOI"):	**$438,700**

Several significant differences were noted between the two appraisals. Their differences include: 1) Ms. Lees attributed 10% of the income to the business, while Mr. Traub attributed 5% of the income to the business; 2) the contributory value of the FF&E was estimated to be $4,000 by Ms. Lees and $3,000 by Mr. Traub; and 3) Ms. Lees utilized a base capitalization rate of 8.5% and a tax loaded cap rate of 10.816%[4], while Mr. Traub utilized a base rate of 8.35% and a tax loaded cap rate of 10.659%.

[4] The Lees Appraisal incorrectly utilized a tax factor of 2.316, which did not take into consideration the 99.7% level of assessment. The correct tax factor should have been 2.309, which would have reduced the overall capitalization rate from 10.816% to 10.809%.

Utilizing its judgment and experience, the board finds the allocation of 10% for business value as utilized in the Lees Appraisal to be more appropriate than the more conservative 5% utilized in the Traub Appraisal as it adequately removes all business related value from the value of the real estate. Further, the board finds a deduction of $3,000 per room, or $216,000, is reasonable for FF&E. In determining an appropriate capitalization rate, the board considered the Lees Appraisal base rate of 8.5% and the Traub Appraisal base rate of 8.35% and finds an 8.5% base rate is reasonable for the Property, thus a tax loaded overall rate of 10.809%, rounded to 10.8% was utilized.

NOI:	$438,700
Less: 10% Income to the Business	($43,870)
NOI to the Real Estate:	$394,830
Overall Capitalization Rate:	10.8%
Market Value:	$3,655,833
Less: FF&E	($216,000)
Market Value of Real Estate:	$3,439,833
Rounded:	$3,440,000
EQUALIZED ASSESSED VALUE (Rounded):	$3,429,700

In summary, the board finds the market value of the Property as of April 1, 2010 to be $3,440,000 for an assessed value of $3,429,700. Therefore, the appeal is granted.

If the taxes have been paid, the amount paid on the value in excess of $3,429,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town 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 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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Michele E. LeBrun, Chair

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Theresa M. Walker, 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 & Zalinsky PC, 722 Chestnut Street, Manchester, NH 03104, counsel for the Taxpayer; James W. Kennedy, Esq., City of Concord, 41 Green Street, Concord, NH 03301, counsel for the City; and City of Concord, Chairman, Board of Assessors, 41 Green Street, Concord, NH 03301.

Date: September 9, 2013

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Anne M. Stelmach, Clerk