

STATE OF MAINE
KENNEBEC, SS.

STATE BOARD OF PROPERTY TAX REVIEW
DOCKET NOS. 94-23 AND 95-162

CARLE STREET ASSOCIATES,)
Petitioner,)
)
v.)
)
CITY OF WATERVILLE,)
Respondent.)

DECISION

These matters came before the State Board of Property Tax Review (hereinafter, the "Board") on the appeals by Carle Street Associates from the denial by the City of Waterville (the "City") of Petitioners' property tax abatement applications for the 1993¹ and 1994² tax years. Appeals of the two tax years are consolidated for purposes of hearing and decision. The property which is the subject of this appeal is a thirty-five unit apartment complex located on Cool Street and designated as Map 38, Lot 64 on the City's tax maps.

A hearing was held on December 4, 1995 before Board members Stephen Morgan, Robert Libby, Harry Hodson, and Lynwood Hand, Chair. William Reagan, appraiser, represented Petitioner; A.V. Federle, Jr., Esq. represented the City. Cynthia Michaud, Assessor, testified for Petitioner.

The Board first addressed the issue of its jurisdiction to hear these appeals. The property tax abatement appeal procedure includes a statutory payment requirement which specifies that taxes must be paid when due in order to enter an appeal. See 36 M.R.S.A. § 843 (4).

With regard to the 1993 tax year, there is no dispute that the first installment of the year's tax bill was due on September 10, 1993. There is also no dispute that the taxpayer paid that installment in three payments, on August 31, 1993, September 29, 1993, and November 3, 1993.

¹
Docket No. 94-23.

²
Docket No. 95-162.

Petitioner filed its appeal with the Waterville Board of Assessment Review ("BAR") on December 9, 1993. The Board finds that Petitioner did not pay the taxes when due prior to filing its appeal with the BAR. Therefore, by unanimous vote, the Board finds it has no jurisdiction to hear an appeal regarding the 1993 tax year, and Docket No. 94-23 is hereby dismissed.

As there is no dispute that taxes were paid when due for the 1994 tax year, the Board proceeded to hear testimony in the appeal of Docket No. 95-162.

Petitioner is seeking a \$167,700 abatement from an assessment of \$867,600 on real estate only; there is no dispute concerning the assessment of personal property. See Petition for Assessment Review. The basis of Petitioner's appeal is that the City has assessed the subject property inequitably in relation to other similar properties. Petitioner holds that the City's use of "market derived figures for determining income and associated expenses," rather than individual income and expense figures, is a form of averaging that penalizes properties which perform below market expectations. See Petitioner's Ex. No. 1. Petitioner argues that since the City, in its cost approach, made adjustments for actual building materials, physical depreciation, obsolescence, etc. so, in its income approach, it should have made similar case by case adjustments to reflect actual economic performance. Petitioner asserts that giving greater weight to the results of the income approach using actual income and expenses will result in an equitable assessment for the property. See id.

The City takes the position that during the 1993 city-wide revaluation, the same methodology was used to assess all commercial property. Both the cost less depreciation approach and the income approach were used. The City asserts that in applying the income approach, its "utilization of market income and expense information and standardized adjustments resulted in an equality of application throughout the commercial community." See City's Response to Petition for Assessment Review.

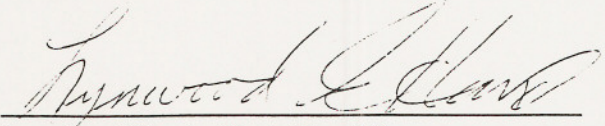
In these proceedings, Petitioner has the burden of proving "that the assessed valuation in relation to the just value is 'manifestly wrong.'" Delta Chemicals, Inc. v. Inhabitants of Searsport, 438 A. 2d 483 (Me. 1981).

By a vote of 3-1, the Board finds that Petitioner has failed to meet his burden of proving the Assessor manifestly wrong.

Any party wishing to appeal this Decision must file a Petition for Review in the Superior Court within (30) days of the date of receipt of this Decision, pursuant to 5 M.R.S.A. §§ 11001-11008 (1990). If this Decision is not appealed, it shall become binding on the parties at the end of said 30-day period.

DATED:

July 20, 1996



Lynwood Hand, Chair Panel C
State Board of Property Tax Review