

STATE OF MAINE
KENNEBEC, SS.

STATE BOARD OF PROPERTY TAX REVIEW
DOCKET NOS: 96-039, 96-040, 96-041

LYMAN POPE, JR.
Petitioner

v.

TOWN OF OLD ORCHARD BEACH
Respondent

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DECISION

This matter came before the State Board of Property Tax Review (hereinafter, the "Board") on the timely appeal by Lyman Pope, Jr. from the denial by the Town of Old Orchard Beach (the "Town") of Petitioner's property tax abatement application for the 1995 tax year. The property which is the subject of this appeal is located at Smithwheel Road and is designated as Map 107, Block 2, Lot 13; Map 107, Block 3, Lot 2; and Map 210, Block 1, Lot 17 on the Town tax maps. Since the Town is a primary assessing area, appeals from denials by the Assessor are brought directly to this Board. See 36 M.R.S.A. § 843 (2) (1990).

Hearing was held on September 24, 1996 before Board members James Born, George Mayo, Malachi Anderson, Philip Hill, and Caspar Cowan, Chair. James F. Molleur, Esq. represented the Petitioner. Norman Marquis, Assessor, represented the Town.

The subject property is a mobile home park. Petitioner is seeking a reduction in assessed value from \$3,194,000 to a proposed valuation of \$1,906,958. Petitioner asserts the \$3,194,000 valuation to be manifestly wrong due to the Town's underestimation of expenses in its calculation of value using the income approach.

Petitioner presented income tax returns for the years 1993 and 1994 as evidence of income and expenses which form the basis of his income approach to the fair market value of the subject property. Using figures from his 1994 tax returns, Petitioner asserts that the fair market value of the property equals gross income, \$789,274, less expenses (with the exception of depreciation, mortgage interest and taxes), \$577,334, multiplied by the

Assessor's capitalization rate, 0.113, plus the cost value of a building used for sales of homes, \$31,400, or \$1,906,912. See Petitioner's Ex. No. 1 @26, 29.

The Town asserts that it considered the cost approach to valuation and found it to be inapplicable. The Town therefore performed the income approach and tested the resulting value against the market approach. The income approach was based upon a market determination of an average rental fee, allowing for unused lots and undeveloped areas, of \$190 per lot. See Respondent's Ex. No. 1, Income Tab @ 5-8. According to testimony, the base lot value of \$6,500 per site used in the income calculations, although conservative, is within 10% of initial calculations and therefore reasonable. See id, Market Tab @ 6. The Town asserts that its market value analysis supports its income value analysis and is thus supportable and credible.

The Town maintains that Petitioner's valuation does not reasonably take into consideration capitalization of certain expenses for maintenance and associated contract labor and that salary expense is unreasonably high for determination of value for property tax purposes. See Petitioner's Ex. No. 1 @ 28. In addition, Petitioner uses one year actual figures for the development of the income approach and does not consider either the market or cost approach. The Town asserts, therefore, that Petitioner has not met his burden to either attack the Assessor's value or present a supportable value himself.

Petitioner essentially argues that his determination of value based upon his 1994 tax returns is valid. He asserts that the IRS has reviewed his 1993 tax returns and found his non allocation of capital expenditures to be appropriate for income tax purposes. Petitioner argues further that his allocation for salary expenses is reasonable for the nature and condition of the property. Thus Petitioner asserts he has presented a supportable value against which the Assessor's value may be determined manifestly wrong.

In these proceedings, the Assessor is presumed correct and the Petitioner must prove the Assessor manifestly wrong. See Shawmut Inn v. Inhabitants of Kennebunkport, 428 A. 2d 384 (Me. 1981). However, the Petitioner's burden does not end there for he must not only successfully impeach the Assessor's determination of value but must also provide affirmative, credible evidence of the property's value in order to meet his burden to prove the assessor manifestly wrong.

The judgment that a property's assessed value is in excess of just value requires a comparison between the local assessment and the version of value that the petitioner for abatement contends is the just one. If the petitioner for abatement fails to provide the Board with evidence of just value that the Board deems credible, the Board has no basis in the petitioner's case for comparing the local assessment and the petitioner version of just value.

City of Waterville, et al. v. Waterville Homes, Inc., 655 A. 2d 365 (Me. 1995).

The Board finds the Assessor has considered all three approaches to value although the Assessor deemed the cost approach to be inapplicable. With regard to the income approach to value, the Assessor developed a market determination of rental income and expenses. The Board finds the Assessor's income approach to be reasonable as tailored to the development of the subject property and tested against the market approach.

The Board finds further that Petitioner used income and expense figures from a single year, as reported on his income tax return. Expenses for income tax purposes, although allowed as non capitalized expenses, are not necessarily appropriate when determining a stabilized estimate of net operating income to determine fair market value for property tax purposes. Here the Board finds historical or market evidence to support a determination of a stabilized estimate of net operating income from which to apply an appropriate capitalization rate to determine fair market value is lacking. Such fact in and of itself supports a finding that Petitioner has not presented proof of a credible value. The Board notes in addition, however, that salary expense is not based upon historical or market figures and may be excessive.

Therefore, the Board votes unanimously that Petitioner has failed to meet his burden in proving the Assessor manifestly wrong and this appeal is hereby denied.

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:

7 February 1997

Caspar F Cowan

Caspar Cowan, Chair Panel C,
State Board of Property Tax Review