

STATE OF MAINE
KENNEBEC, SS.

STATE BOARD OF PROPERTY TAX REVIEW
DOCKET NO. 95-143 through 95-146

DONALD TOUSSAINT,)
 Petitioner,)
)
 v.)
)
CITY OF LEWISTON,)
 Respondent.

DECISION

This matter came before the State Board of Property Tax Review (hereinafter, the "Board") on the timely appeal by Donald Toussaint from the denial by the City of Lewiston's Assessor of Petitioner's property tax abatement applications for the 1994 tax year. The subject of these appeals is a group of rental properties located at Hartley Street, Main Street, and Randall Road.¹ Since Lewiston 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). By agreement of the parties and with the consent of the Board, Docket Nos. 95-143, 95-144, 95-145, and 95-146 were consolidated for purposes of hearing and decision.

By Order of the Board dated July 10, 1995, a Motion to Dismiss filed by the City was denied and a hearing on the merits commenced on September 20, 1995 before Panel C members Philip Hill, George Mayo, James Born, and Caspar Cowan, Chair. David Silk, Esq. represented Petitioner, Robert Hark, Esq. represented the City. Donald Toussaint, the taxpayer, and Norman

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Docket No. 95-143: 2 Hartley St., a two-story wooden building containing eight town houses designated as Map 25 B, Lot 2; 3 Hartley St., 3 commercial units, Map 25 B, Lot 3; 4 Hartley St., a two-story wooden building containing eight apartments, Map 25 B, Lot 4; 5 Hartley St., a two-story wooden building containing six apartments, Map 25 B, Lot 5; 6 Hartley St., a two-story wooden building containing eight apartments, Map 25 B, Lot 6; 7 Hartley St., a three-story wooden building containing six apartments, Map 25 B, Lot 7; 8 Hartley St., a two-story wooden building containing eight apartments, Map 25 B, Lot 8; 10 Hartley St., a two-story wooden building containing eight apartments, Map 25 B, Lot 10. Docket No. 95-144: 905 Main St., two attached wooden buildings containing sixteen apartments, Map 33D, Lot 905. Docket No. 95-145: 211 Randall Rd., fourteen eight-unit buildings containing a total of 112 apartments, Map 20 C & D, Lot 211. Docket No. 95-146: 184 Randall Rd., four wooden buildings containing thirty-two apartments, Map 25 A & B, Lot 184.

Gosline, appraiser, testified for Petitioner. Joseph Grube, City Assessor, testified for the City.

Petitioner is seeking abatements as follows:

LOCATION	ASSESSMENT	PROPOSED VALUE
Hartley Street	\$1,877,350	\$1,320,000
Main Street	\$456,100	\$352,000
211 Randall Street	\$3,472,000	\$2,950,000
184 Randall Street	\$856,900	\$630,000

See Petitioner's Ex. No. 1.

The proposed values for 2, 4, 5, 6, 7, 8, and 10 Hartley Street are based upon Petitioner's purchase price of approximately \$21,000 per unit in late 1993 along with appraisals of some of these properties prepared by Certified Appraisal dated May 14, 1993. See Petitioner's Ex. Nos. 4-7. The proposed value for 3 Hartley Street is based upon an appraisal by Amerifirst Appraisal Co. dated October 19, 1992. See Petitioner's Ex. No. 8. The proposed value for 905 Main Street is based upon an appraisal dated May 5, 1992 by Amerifirst. See Petitioner's Ex. No. 3. The proposed value for 184 Randall Road is based upon an appraisal dated August 10, 1992 by Mainland. See Petitioner's Ex. No. 2. No testimony was presented in support of these appraisals.

The proposed value for 211 Randall Road is based upon an appraisal by Gosline and Co. dated April 1, 1994. See Petitioner's Ex. No. 9. All three commonly accepted approaches to valuation are used in this appraisal, with emphasis, in the final reconciliation, on the sales and income approaches. See id. at 77.

Petitioner argues that the City assessed the subject property for the 1994 tax year at the 1992 value which was, in turn, based upon 1991 information. A lack of sales, according to Petitioner, should have alerted the City to a downward trend in the market which lowered the value of the subject property. However, Petitioner alleges the City made no attempt to determine actual vacancy rates or expense ratios for the subject property. Petitioner asserts that, despite the fact that the City is required to set the value of property on April first of each year, pursuant to 36

M.R.S.A. §§ 701-A and 708, the City merely rolled over property values from 1992 to 1993 to 1994 in a declining market with the result that the assessments are manifestly wrong and subject property is overvalued.

The City does not dispute that property must be assessed each year. The City asserts, however, there is no requirement that each individual property be appraised each year, neither is there any requirement that values be changed each year. The City maintains it is sensitive to changes in market vacancy rates and has tracked rental levels and other market indicators. A table entitled "Per Unit Multi Family Assessment," showing the downward trend of assessed values for each year from 1989 through 1994, is reflective of the City's ongoing vigilance to the sensitiveness of the market, according to the City. See Respondent's Ex. No. 1. The City also challenges Mr. Gosline's use of bank owned or controlled properties as comparables in his sales analysis.

In these proceedings, Petitioner has the burden of proving that the judgement of the City was "so unreasonable in light of the circumstances that the property is substantially overvalued and an injustice results; or there was unjust discrimination; or the assessment is fraudulent, dishonest or illegal." See Town of Vienna v. Kokernak, 612 A.2d 870 (Me. 1992).

The Board notes the law is clear that values must be set each year, however values need not be changed each year so long as they are reflective of equalized just value.

The assessors and the chief assessors of a primary assessing area shall ascertain as nearly as may be the nature, amount and value as of the first day of each April of the real estate and personal property subject to be taxed.

36 M.R.S.A. § 708.

Turning first to the 211 Randall Road property, the Board notes that of the three appraisal methods used in the Gosline appraisal, the sales analysis approach has the least credibility because it is tainted by the inclusion of comparables which appear not to be arm's length transactions and by other flaws.

The income approach in the Gosline appraisal is based upon the use of a number of multipliers including vacancy rate, expense ratio and capitalization rate, developed by the

appraiser. The Board notes an adjustment in the Gosline appraisal expense ratio from 38% to 32% would result in an appraised value within 10% of the assessed value. Likewise an adjustment of 0.5% in the capitalization rate would bring the Gosline value to within 10% of the assessed value.

The Board considers the cost approach to be the most reliable in this case as it does not fluctuate with every rise and fall in the market and is especially appropriate for relatively new property such as the subject. The Gosline cost approach value is also within 10% of the assessed value.

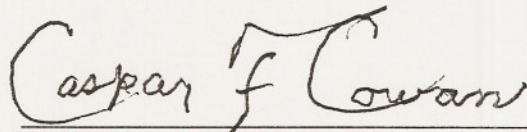
Therefore, the Board finds Petitioner has failed to impeach the Assessor with respect to the 211 Randall Road property.

The Board is unable to give much weight to Petitioner's appraisals of 2, 3, 4, 6, and 7 Hartley Street, 905 Main Street, and 184 Randall Road as they are not relevant to the 1994 tax year and Petitioner presented no witnesses to defend the methodology. Therefore, with regard to all the properties under appeal except the 211 Randall Road property, the Board does not find Petitioner has presented sufficient credible evidence to support a figure against which the assessment can be judged. See City of Waterville v. Waterville Homes, 655 A. 2d 365 (Me. 1995).

Therefore, by unanimous vote, the Board finds Petitioner has failed to meet his burden of proving overvaluation and this petition is hereby denied for all the properties.

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: April 3, 1996



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