

Eastpoint Properties (formerly Berkshire Management, Inc.)

v.

Town of Newton

Docket No. 5026-88

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$889,800 (land, \$33,900; buildings, \$855,900) on a FMHA Rural Rental Housing Program property consisting of 7 buildings with 45 one-bedroom units (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved it was disproportionally taxed.

The Taxpayer's arguments are set forth in the Taxpayer's exhibit 1 ("Value-Assessment Analysis").

The Taxpayer argued the assessment was excessive because:

(1) the Property's highest and best use is as a subsidized housing development;

(2) the federal laws and regulations restrict the return on the Property and restrict the salability of the Property;

(3) the assessment did not include any adjustment for the effects of the FMHA mortgage; and

(4) the income approach demonstrates a lower value.

The Town argued the assessment was correct and based on the replacement-cost tables used in a 1981 revaluation.

Based on the evidence, we find the correct assessment should be \$807,600 (land \$33,900 and buildings \$773,700--units \$737,100; community building \$35,600; well house \$1,000). This assessment is ordered because:

(1) the FMHA mortgage and the income available from the Property affects the Property's marketability and thus a straight replacement-cost analysis does not, in this case, accurately reflect the proper assessment;

(2) the fact that all units are one-bedroom units adversely affects the Property's marketability; and

(3) the income approach, while instructive, is only one of the guides to arrive at a proper assessment, and, in this case, the Property's 1978 cost was \$1,057,000 and thus the equalized assessment of \$1,683,000 ($\$656,000 / .39$) proposed by the Taxpayer does not reflect all of the Property's value.

If the taxes have been paid, the amount paid on the value in excess of \$807,600 shall be refunded with interest at six percent per annum from date paid to refund date.

February 6, 1991

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to John M. O'Connor, the Taxpayer's agent, and to the Chairman, Board of Selectmen, Town of Newton.

Michele E. LeBrun, Clerk

February 6, 1991