Somersworth Limited/American Development

v.

City of Somersworth

Docket No. 6471-89 and 9415-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1989 and 1990 assessments of $829,600 on a 36-unit, apartment building that has a Farmers Home Administration (FmHA) mortgage with rent restrictions (the Property). For the reasons stated below the appeals for abatement are granted. The board also denies the City's motion to dismiss.

The Taxpayer has the burden of showing the assessments were 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 disproportionality.

The Taxpayer argued the assessments were excessive because:

1) the Property is subject to FmHA mortgage restrictions and these restrictions limit the Property's income and thus, the Property's value; and

2) an income-approach appraisal estimated a market value of $1,300,400 for both 1989 and 1990, resulting in assessments of $624,000 (1989) and $676,000 (1990).

The Town argued the assessments were proper because:

1) the Taxpayer's present value opinion is lower than the Property's original mortgage principal;

2) the Property is a superior apartment complex;

3) the Property's per-unit values are lower than the per-unit values on other subsidized apartment complexes; and

4) based on an appraisal by Donald J. McNamara, the Property was worth approximately $1,500,000 in November 1992.

Based on the evidence, we find the correct assessments should be $624,000 (1989) and $676,000 (1990). These assessments are ordered because we accept the Taxpayer's appraisal evidence as the best available evidence. As noted at the hearing, the Taxpayer's appraiser, Mr. O'Connor, and the City's appraiser, Mr. McNamara, were in general agreement concerning the effective gross income, but they disagreed on the operating expenses and the capitalization rate. The Town estimated the expenses should be 52.3%, but this figure included expensing the taxes. Subtracting the taxes from the City's operating expenses, results in a 27% figure. The taxes should not be expensed but should be included in the overall capitalization rate. As stated in Property Appraisal and Assessment Administration, 258-59 (IAAO 1990), "To avoid circularity *** property taxes are accounted for in valuation for assessment purposes by adjusting the capitalization rate. Otherwise, the amount of tax affects the estimate of value used to calculate the tax." See also Id. at 287.

The Taxpayer used a 47% operating-expense figure. Mr. O'Connor agreed that, as a percentage figure, 47% for operating expenses would appear to be excessive. However, he correctly stated the mandated lower rents (below market) result in lower income, but the expenses were market expenses. The board, accepting Mr. O'Connor's explanation, examined each of the expense line items to determine whether each included item was appropriate. The Taxpayer's actual expenses appear to be within the range of market expenses. Additionally, we find Mr. McNamara apparently under expensed the maintenance.

Mr. O'Connor and Mr. McNamara also disagreed on the capitalization rate to be used. Mr. McNamara asserted a .05 capitalization rate should be used. If this capitalization rate is adjusted by adding in the effective tax rate (.024), the revised capitalization rate would be .0783. Mr. O'Connor asserted a .06 cap rate was more appropriate given the FmHA loan involved. The cap rate used by Mr. O'Connor correctly reflected the loan-two-value ratio and interest rate for these FmHA mortgages. These FmHA mortgages only require 10% down and based on an interest paydown, result in a 1% interest rate. Having accepted

Mr. O'Connor's

expense and capitalization rate, and there being general agreement concerning the effective gross income, the board adopts Mr. O'Connor's value estimate.

If the taxes have been paid, the amount paid on the value in excess of $624,000 for 1989 and $676,000 for 1990 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

CITY'S MOTION TO DISMISS

The City moved to dismiss the "Taxpayer's" appeal because the Taxpayer did not present any evidence concerning the general level of assessment in the community. The board denies the City's motion to dismiss.

The board has already addressed this specific issue in Birch Pond Office Park Association v. City of Nashua, Docket Nos. 4246-88 and 5894-89 and in New England Life Insurance Company v. City of Nashua, Docket No. 8471-90. The board incorporates in this decision pages 8-13 of those decisions, excluding the specific calculations found on page 13. (Copy of decisions attached.) Some of the discussion below reiterates and reinforces the board's earlier conclusions.

The City argued the equalization ratios could not be used by the board because the City did not stipulate to the ratios and the Taxpayer failed to provide evidence to support the equalization ratios or to demonstrate the City's
general level of assessment. We reject the City's position. Initially, we direct the parties to the Birch Pond decision for the board's response to this argument. Furthermore, we direct the parties to the City assessor's answers to board questions.

At the hearing, the City assessor testified the last general revaluation occurred for the 1981 tax year. From 1981 to 1989 and 1990, the City reviewed assessments on apartment complexes but only compared the complexes to each other. The City, did not perform any studies or make any adjustments to assessments based on relative changes in the market. In other words, the assessments now under appeal were derived from 1981 market data even though the market changed dramatically from 1981 to 1989 and 1990.

At the hearing the City admitted:

1) RSA 75:1 requires assessments to be based on the market values;

2) RSA 75:8 requires municipalities to annually review assessments and revise based on market data;

3) the City did not annually review these assessments; and

4) performing ratio studies is burdensome.

Obviously the City's failure to annually review assessments raises several questions concerning proportionality, which the City cannot answer. The specific question now being whether the appealed properties were equitably assessed.

Based on the evidence presented, including the City's admissions, the board concludes the City has not complied with its obligations to ensure proportional assessments. Birch Pond discussed the law concerning these obligations. Having failed to fulfill its obligations, the City cannot now stonewall the Taxpayer's who have shown overassessment by equalizing the assessments with the applicable equalization ratios and then comparing those equalized values with the fair market value evidence.

One factor underlying this decision is the reality that ratios studies require a significant effort and expense. The same is true for reviewing and supporting the DRA's study. At the hearing, the City acknowledged that performing ratio studies was an onerous task. Specifically, the reason the City had not done an annual study was because it would have been too onerous. If the task is burdensome for municipalities, then certainly it would be prohibitive for all but the wealthiest taxpayers.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Marvin F. Poer & Company representative for Somersworth Limited/American Development, taxpayers; and Brian Barrington, Esq., counsel for the City of Somersworth.

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Valerie B. Lanigan, Clerk

Date: December 22, 1992

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