

**Woodland Commons General Partnership
(Boscawen/Maine Trust)**

v.

Town of Boscawen

Docket No.: 12046-91-PT

DECISION

The "Taxpayer"¹ appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$735,400 (land \$174,300; buildings \$561,100) on a 7.2-acre lot with five apartment buildings (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried its burden of proof and proved disproportionality.

The parties stipulated the department of revenue administration's 1991 equalization ratio of 114% represented the town's general level of assessment.

¹The appeal was filed with the board on June 26, 1992 by Woodland Commons General Partnership (Woodland), the owner of the property at that time. Boscawen/Maine Trust (Trust) acquired title on December 1, 1993 by foreclosure deed and paid the 1991 tax levy on the property. On October 11, 1994, Woodland assigned its rights of tax abatement to Trust. Therefore, the term "Taxpayer" refers to either Woodland or Trust depending on the stage of the appeal.

The Taxpayer argued the assessment was excessive because:

- (1) the high number of foreclosure sales of comparable property would affect the Property's market value as of April 1991;
- (2) significant repairs were needed to make the Property competitive with comparable properties;
- (3) the Property has many low cost and sub-code features such as hollow core entry doors, balloon frame, no insulation in the walls and minimal insulation in the attic and poorly installed and planned plumbing;
- (4) many of the short term capital items such as roofs, septic systems and plumbing fixtures had not been replaced since the units were built in 1970 and were in need of repair or replacement; and
- (5) most units were rented on a weekly basis which was significantly more management intensive and had a higher bad debt level than properties rented on a monthly rental basis.

The Town argued the assessment was proper because:

- (1) the assessment was abated from an original assessment of \$1,239,800;
- (2) the mortgagee equity technique for determining a capitalization rate is more reliable than deriving the rate from an analysis of bank sales; and
- (3) a reconstruction of the O'Neil appraisal report using a capitalization rate derived by the mortgagee equity technique supports the abated \$735,400 assessment.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$587,100.

The board has not allocated the value between land and building,

Page 3

Woodland Commons General Partnership v. Town of Boscawen

Docket No.: 12046-91-PT

and the Town shall make this allocation in accordance with its assessing practices.

In making a decision on value, the board looks at the Property's

value as a whole (i.e., as land and buildings together) because this is how the market

views value. Moreover, the supreme court has held the board must consider a

taxpayer's entire estate to determine if an abatement is warranted. See Appeal of

Town of Sunapee, 126 N.H. 214, 217 (1985).

This assessment is based upon a 1991 market value finding of \$515,000 equalized by the 1991 equalization ratio of 114% ($\$515,000 \times 1.14$).

The board finds the appraisal and testimony of Michael O'Neil to be the best evidence of the Property's market value. Due to the poor condition of the Property and the lack of comparable market value transfers, Mr. O'Neil relied on the income approach to value. The Town also presented an estimate by the income approach by reworking Mr. O'Neil's calculations. The parties differed on three factors: the appropriate vacancy rate, laundry income and the appropriate capitalization rate; the capitalization rate was by far the most significant factor.

In general, the board finds Mr. O'Neil's calculations to be more closely related to the 1991 market conditions than the Town's calculations.

Vacancy Rate

The parties only differed on the vacancy rate by 2.5%. However, given the weekly rental history and associated collection loss, the poor condition of the Property and the general over-supply of similar rental units in 1991, the higher vacancy rate of 17.5% is quite reasonable.

Laundry Income

In theory, income from laundry and other miscellaneous sources related to the real estate should be included with the rental income to provide an overall indication of value. (The depreciated value of the personal property from which the miscellaneous income is derived should also be deducted from the final value conclusion). In this case, however, due to the questionable safety issue of having the laundry units in the hallways and the questionable capacity and condition of the septic systems, a prudent purchaser would not consider the laundry income as either a certainty or as a significant source of net income.

Capitalization Rate

Mr. O'Neil's capitalization rate of 14% (exclusive of the tax rate) is reasonable for this Property which contained many risks for any investor in 1991. Mr. O'Neil (on pages 7 and 8 of Exhibit TP - 2) properly considers and weighs the risks and assets of the Property in arriving at a rate higher than one indicated by the mortgagee equity technique. As testified, because institutional financing was nearly non-existent for this type of property in 1991, it is reasonable to temper a mortgagee-equity derived rate by other market evidence and the inherent high risk of the Property.

If the taxes have been paid, the amount paid on the value in excess of \$587,100 shall be refunded with interest at six percent per annum from date paid to

refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the

Page 5
Woodland Commons General Partnership v. Town of Boscawen
Docket No.: 12046-91-PT

ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date,

postage prepaid, to John G. Cronin, Esq., counsel for Woodland Commons General Partnership, Taxpayer; and the Chairman, Selectmen of Boscawen.

Dated:

0009

Valerie B. Lanigan, Clerk

Woodland Commons General Partnership

v.

Town of Boscawen

Docket No.: 12046-91-PT

ORDER

During the hearing and the board's deliberations, the issue of standing of the current owners, Boscawen/Maine Trust (Trust), to prosecute this appeal was raised by the board. Because this is an issue potentially dealing with the board's jurisdiction to issue a decision in this case, the board will allow parties to submit, within 20 days of this order, offers of proof and memoranda of law on the following issues.

1) By what authority does Trust have to prosecute the Woodland Commons General Partnership (Woodland) appeal?; and

2) If the board were to grant an abatement, would such abatement be to the benefit of Woodland or Trust?

For the benefit of the parties, the board has reviewed the record and provides this brief chronology of the appeal and various appearances. On June 26, 1992, an appeal was filed on behalf of Woodland signed by R.W. Gordon, Agent for the owner. On October 12, 1992, the board received an appearance filed by Marvin F. Poer & Company on behalf of Woodland. On July 15, 1994, the board sent a hearing notice to Marvin F. Poer & Company. On July 29,

Page 2

Woodland Commons General Partnership v. Town of Boscawen - Order
Docket No.: 12046-91-PT

1994, Marvin F. Poer & Company filed a withdrawal of appearance. On August 9, 1994, the board sent a copy of the hearing notice to Woodland in care of Ron Dupont, a partner of Woodland. On August 19, 1994, the day of the hearing, an appearance was filed by John Cronin, Esq., on behalf of Philip Desmaris, Trustee of Trust, as a successor in interest to Woodland.

The board notes that Mr. Cronin argued at the hearing that Trust had standing as a successor in interest to Woodland and because Trust paid the 1991 taxes in 1994. However, apparently there was no specific assignment of appeal rights from Woodland to Trust. The board notes that if such a transfer of appeal rights is obtained by Trust, the standing issue would be moot.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify that copies of the within Order have been mailed this date, postage prepaid, to Ronald Dupont, Woodland Commons General Partnership, Taxpayer; John G. Cronin, Esq., counsel for Boscawen/Maine Trust; and the Chairman, Selectmen of Boscawen.

Date: _____

Woodland Commons General Partnership
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Docket No.: 12046-91-PT

ORDER

The board received a request for clarification from the Town on November 18, 1994. While the request is past the 20 day rehearing deadline (RSA 541:3 and TAX 201.37), the board on its own motion clarifies its decision of October 25, 1994 by amending it on Page 1 to read:

"The 'Taxpayer' . . . on a 7.2-acre lot with seven apartment buildings (the Property)."

This amendment does not substantively change the decision as the ordered assessment was inclusive of seven apartment buildings.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Page 2
Woodland Commons v. Town of Boscawen
Docket No.: 12046-91-PT

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to John G. Cronin, Esq., counsel for Woodland Commons General Partnership, Taxpayer; and the Chairman, Selectmen of Boscawen.

Date: December 8, 1994
0009

Valerie B. Lanigan, Clerk