

Concord Village Apartments Assn.

v.

Town of Boscawen

Docket Nos.: 14790-93PT and 15345-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$1,047,400 (land \$184,500; buildings \$862,900) and 1994 assessment of \$876,600 (land \$166,900; buildings \$709,700) on a 9-acre lot containing 8 apartment buildings with 4 apartments per building (the Property). For the reasons stated below, the appeal for abatements is granted.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carry its burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) based on a report prepared by Mr. Alan Johnson, the proper 1993 and 1994 assessments should be \$808,000 and \$671,800 respectively;
- (2) the highest and best use of the Property is as continued subsidized housing under the regulations of Section 515 Farmers Home Administration (FHA);

(3) the main differences between the Town and the Taxpayer in determining the value by the income approach is in the proper management costs and capitalization rates;

(4) 6 units do not receive subsidized rent and it is these units that comprise the majority of the vacancy rate;

(5) managing Section 515 housing requires more time and oversight than non-regulated housing due to the regulation requirements; thus a management fee as accepted by FHA higher than the market norm is reasonable;

(6) an analysis of the Property assuming unregulated rents, indicates an even lower market value than as a subsidized project; and

(7) even if a credit for equity buildup and appreciation is included in the mortgage equity analysis over the remaining period of the loan agreement, a 7.2% overall capitalization rate is appropriate.

The Town argued the assessments were proper because reconstructing the Taxpayers income approach by revising the management fee and the capitalization rate results in market value that supports the assessed values.

Board's Rulings

Based on the evidence, we find the proper assessments should be \$808,000 for 1993 and \$671,800 for 1994.

The parties in their presentations narrowed their differences down to essentially two issues in the income approach to value: 1) what is a reasonable management expense?; and 2) what is the proper capitalization rate? In both instances the board agrees with the Taxpayer's assumptions and analysis.

Proper Management Expenses

The board finds the Taxpayer's arguments that the management expenses exceed that for the norm of unregulated rental units is reasonable given the additional management requirements in renting the units in compliance with the FHA regulations. The New Hampshire Supreme Court has held in Steele v. Town of Allenstown, 124 N.H. 487, 491-492 (1984) that ... "[to] ignore the government regulations and federal subsidies in assessing value also is contrary to the rule that government regulations concerning subsidized financing are a relevant factor for the purpose of determining the market value of federally subsidized housing. See Royal Gardens Co. v. City of Concord, 114 N.H. 668, 671-672, 328 A.2d 123, 124-125 (1974), and the rule that _in estimating the value of property ... state and federal control of income is taken into account._" Demoulas v. Town of Salem, 116 N.H. 775, 781, 367 A.2d 588, 593 (1976). The Taxpayer submitted extensive evidence including the screening of applicants to determine eligibility and the other record keeping requirements for compliance with the FHA regulations that justify the higher than normal management expense for this Property. (See Taxpayer's Exhibit #1, tab F.)

Capitalization Rate

The board finds the Town and the Taxpayer were essentially in agreement with the overall capitalization rate of approximately 7.2% at some point prior to the hearing. Apparently, the Town reworked its numbers incorporating a credit for appreciation and equity buildup over a ten year holding period to arrive at a lower rate as argued at the hearing. The board finds the equity buildup and appreciation credit unreasonable because it was based on such a

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short holding period and assumes a 2% annual appreciation for this type of property.

The testimony and evidence submitted indicates that the Property is encumbered with FHA regulations and cannot be converted to an unregulated status for a minimum of 14 years and more likely 44 years given the advantageous 2½% mortgage rate for a 50 year term. Further, the board finds that due to the generally low quality type of construction and the market focus of the Property, it is unreasonable to assume any significant appreciation rate during the term of the FHA financing or any reasonable holding period.

If the taxes have been paid, the amount paid on the value in excess of \$808,000 for 1993 and \$671,800 for 1994 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995. Until the Town undergoes a general reassessment, the Town shall use the 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 thirty (30) 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 in

law. Thus, new

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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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial. 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 Peter D. Wenger, Esq., Counsel for Concord Village Apartments Assn., Taxpayer; and Chairman, Selectmen of Boscawen.

Dated: March 28, 1996

Valerie B. Lanigan, Clerk

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