

Boscawen/Maine Trust

v.

Town of Boscawen

Docket Nos.: 14791-93PT and 15741-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$587,100 and 1994 assessment of \$612,200 (land \$90,700; buildings \$521,500) on a 7.2-acre lot with 7 apartment buildings -- 4 buildings containing 4 apartments each, 2 buildings containing 6 apartments each, and 1 building containing 5 apartments (the Property). For the reasons stated below, the 1993 appeal is denied but the 1994 appeal 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 failed to carry this burden for the 1993 assessment but did for the 1994 assessment.

The Taxpayer argued the assessments were excessive because:
(1) based on an appraisal report prepared by Michael J. O'Neil the proper assessed values were \$445,250 and \$367,500 for tax years 1993 and 1994 respectively;

Docket Nos.: 14791-93PT & 15742-94PT

- (2) the difference between the Town and the Taxpayer is generally in the capitalization rate;
- (3) the estimated 14% capitalization rate was derived from the market and exclusive of tax rate;
- (4) the units had a high level of deferred maintenance that required \$105,000 of repairs to make them rentable; and
- (5) due to the poor condition of the Property, financing was not available from conventional sources.

The Town argued the assessment was proper because:

- (1) the Taxpayer's capitalization rate was derived from the market, which was, at that time depressed and not a proper basis for calculating the assessment;
- (2) the type of sales relied upon by the Taxpayer in deriving a capitalization rate were bank sales and were excluded by the department of revenue administration in its equalization ratio study; and
- (3) a reworking of the Taxpayer's income approach using a capitalization rate derived by the mortgage equity technique supports the assessments for both years.

Board's Rulings

The parties agreed the 1993 and 1994 equalization ratios were 137% and 98% respectively. Based on those ratios the 1993 indicated market value was \$428,540 ($\$587,100 \div 1.37$) and the 1994 indicated market value was \$624,694 ($\$612,200 \div .98$). The 1993 assessment under appeal was based on a decision by this board in docket #12046-91PT Woodland Commons General Partnership (Boscawen/Maine Trust) v. Town of Boscawen. In that earlier decision the board found a 1991 market value of \$515,000 and arrived at an assessment of

Page 3
Boscawen/Maine Trust v. Town of Boscawen
Docket Nos.: 14791-93PT & 15742-94PT

\$587,100 by applying the 1991 equalization ratio of 1.14. The decision also ordered the Town to refund any overpayment for 1992 and 1993 based on that ordered assessment. During the hearing, the board noted (and the parties agreed) that it would take official notice of docket #12046-91PT.

Based on the evidence, the board finds the Taxpayer failed to prove the 1993 assessment was excessive. However, the board finds that the proper assessment for 1994 should be \$465,500 based on a market value finding of \$475,000 equalized by the Town's 1994 equalization ratio of 98%.

As with the 1991 appeal, the parties differ on relatively few items. However, their value conclusions are significantly different.

Many of the problems the board found existed in 1991 with this Property still existed in 1993 and 1994. The Property had extensive deferred maintenance which was beginning to be addressed in 1993 and 1994, but many significant items were still to be done. The issues of substandard plumbing, lack of insulation, electric heat, septic problems and the probable lack of market financing were still factors that affect the Property in the years under appeal.

The significant difference the board finds in this decision versus 1991 is that both the Property and the general market were headed in a positive direction. In 1993 the Property was acquired by the Taxpayer and some deferred maintenance was begun. Similarly, the general real estate market was no longer declining and in fact was showing signs of gradual stabilization and improvement according to the various O'Neil appraisals submitted in evidence.

they depart is the capitalization rate in the income approach. The Taxpayer relies on a rate that is derived directly from the market based on five sales, while the Town based its rate on the mortgage equity technique. In this case, the board accepts neither party's final capitalization rate as reasonable. The board's conclusion in this case departs from its 1991 findings for basically two reasons: 1) additional evidence was submitted by both parties, especially the Town; and 2) as stated earlier in 1993 and 1994, the market was showing some stabilization and there were indications of the possible future appreciation where no such indication existed in 1991.

In attempting to find a reasonable approach to a market value conclusion in this case, the board proceeded in two fashions: 1) the board reviewed, in depth, the 1993 and 1994 O'Neil "limited appraisal report" (Taxpayer Exhibit #2); and 2) the board estimated a capitalization rate by the mortgage equity technique using assumptions derived from the testimony and evidence and the board's general experience and knowledge.

O'Neil Limited Appraisal Report

Mr. O'Neil arrived at three indications of market value for both years using a sales approach, the income capitalization approach and an alternative income approach known as the discounted cash flow (DCF).

In correlating his values for both years, Mr. O'Neil gave weight apparently to only the sales and the income capitalization approaches. He made no mention of the DCF in the correlation of value except to state that the DCF approach has a greater number of assumptions and often indicates a higher value. The board, however, in

reviewing Mr. O'Neil's report, was

Page 5

Boscawen/Maine Trust v. Town of Boscawen

Docket Nos.: 14791-93PT & 15742-94PT

disturbed by the significant disparity between the DCF and the income capitalization approach. In reviewing the detailed assumptions made in the DCF approach versus

the income capitalization approach, the board finds that the DCF should be given significant weight in this case. As stated earlier, the board perceived the Property as being at a pivotal point of change in 1993 and 1994 and any prospective investor would make certain positive assumptions during a projected holding period. This is exactly what Mr. O'Neil did in the DCF by assuming a certain increase in the rental rates over the seven year holding period. Likewise, his reversion capitalization rate of 12% indicates a better market (and Property) at the end of the holding period than the one that existed at year one in the DCF.

Conversely, to rely heavily on the income capitalization approach places too much weight on the negative aspects of the Property that existed in 1993 and 1994. That approach does not factor in any appreciation or increase in rents and does not take into account the benefit of capital repairs made in years one and two in the DCF or the potential for improving the occupancy of the Property.

In short, the board in reviewing Mr. O'Neil's DCF assumptions finds them to be generally reasonable and reflective of what a prudent investor would assume during a seven year holding period. For that reason the board finds the DCF value indications of \$440,000 for 1993 and \$508,000 for 1994 should be given significant weight in an overall correlation of value.

Revised Income Capitalization Approach

As stated earlier, the parties agreed on all the various calculations of an income approach with the exception of the capitalization rate. In an

Page 6

Boscawen/Maine Trust v. Town of Boscawen

Docket Nos.: 14791-93PT & 15742-94PT

attempt to arrive at a value based on some of the findings the board has already made (such as difficult financing, deferred maintenance and higher risk property, etc.), the board developed a capitalization rate by the mortgage equity technique with the following assumptions for both years: 1) an equity yield rate of 15%; 2) a

mortgage interest rate of 9½%; 3) an amortization period of 20 years; 4) a loan-to-value ratio of 50%; 4) a holding period of 7 years; 5) an annual appreciation of 1% per year; and 6) an effective tax rate of 2.7% for 1993 and 2.5% for 1994. The indicated capitalization rates based on these assumptions were 14.4% for 1993 and 14.2% for 1994.

The most significant assumption in the boards' mortgage equity was the loan-to-value ratio for 50%. The board agrees with the Taxpayer that obtaining conventional financing for the Property would have continued to be difficult in 1993 and 1994. Rather than assuming the banks would raise their interest rate to reflect the higher risk inherent in the Property, we find it is more likely the bank would loan a lesser amount necessitating a higher percentage of owner equity in the project.

Second, we find that the equity yield rate as suggested by the Town of 12% does not adequately capture the higher risk this Property exhibits. Consequently, we found a 15% equity yield rate to be more reasonable. (The summaries of the 1993 and 1994 mortgage equity calculations are attached in Addendum A and made part of the decision.)

We find Mr. O'Neil's final estimates of expenses for completing the most urgent deferred maintenance and repairs for each year are reasonable at \$50,000 in

1993 and \$33,000 in 1994. Applying the board's capitalization

Page 7

Boscawen/Maine Trust v. Town of Boscawen

Docket Nos.: 14791-93PT & 15742-94PT

rates to the parties' agreed net operating income for both years and subtracting the cost of the repairs arrives at the following indications of value:

	<u>1993</u>	<u>1994</u>
Net Operating Income	\$65,683	\$71,674
Capitalization Rate	14.4%	14.2%
Estimate of Value	\$456,132	\$504,746
Less Cost of Repairs	\$50,000	\$33,000
Final Estimate of Value	\$406,132	\$471,745

Correlation

In comparing and correlating the indications of value arrived at by O'Neil's DCF and the board's income capitalization, the board concludes market value findings of \$425,000 in 1993 and \$475,000 in 1994.

The board finds no disproportionality existed in 1993 because the equalized market value was \$428,540, very similar to the board's finding of \$425,000. For 1994 the board finds that the proper assessed valuation should be \$465,500 based on the market value finding of \$475,000 and the equalization ratio of 98%.

Conclusion

This is indeed a difficult property to value due to its uniqueness and the changing market for this type of property. It has been said that "[t]he search for _fair market value is a snipe hunt carried on at midnight on a moonless landscape_", Fusegni v. Portsmouth Housing Authority, 114 N.H. 204, 211 (1994) (citations omitted).

Lastly, the board finds the spectrum of market value findings for this Property, that the board has considered in the past two years is reasonable and generally tracks the testimony presented in this case and market
Page 8
Boscawen/Maine Trust v. Town of Boscawen
Docket Nos.: 14791-93PT & 15742-94PT

information the board generally hears for this time period. The board's market value findings in 1991 of \$515,000 and its 1993 and 1994 values of \$406,000 and \$475,000 generally reflect the changing market over the 1991 - 1994 period.

If the taxes have been paid for tax year 1994, the amount paid on the value in excess of \$465,500 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 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

Page 9
Boscawen/Maine Trust v. Town of Boscawen
Docket Nos.: 14791-93PT & 15742-94PT

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 John G. Cronin, Esq., Counsel for the Boscawen/Maine Trust, Taxpayer; and Chairman, Selectmen of Boscawen.

Dated: April 26, 1996

Valerie B. Lanigan, Clerk

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ADDENDUM A

Boscawen/Maine Trust

v.

Town of Boscawen

Docket No.: 15741-94PT

REHEARING ORDER

The board received on May 20, 1996 a motion for reconsideration (Motion) from the "Town." The Town stated the board should have considered in its April 26, 1996 decision (Decision) the use of a discount rate in the O'Neil discounted cash flow similar to the capitalization rate used in the board's direct capitalization estimate. The board denies the Motion for the following reasons.

First, the arguments and evidence the Town wishes to submit on rehearing could have been presented at the time of the hearing. See TAX 201.37(e).

Second, even if the board were to consider the Town's arguments, we would not find the Town's conclusions necessarily correct because:

1) a discount rate is different than a capitalization rate used in the direct capitalization technique (e.g., no appreciation is calculated in the discount rate); 2) O'Neil's discounted cash flow indicates an approximate 6% annual increase in the net operating income over the 7-year holding period, primarily the result of anticipated rental increases and reduced vacancies; such

assumptions have some risk associated with them, which would normally necessitate a higher discount rate.

The Town may appeal the board's denial of its Motion to the supreme court within 30 days of the clerk's date below.

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 order has been mailed this date, postage prepaid, to John G. Cronin, Esq., Counsel for the Boscawen/Maine Trust, Taxpayer; and Chairman, Selectmen of Boscawen.

Dated: May 23, 1996

Valerie B. Lanigan, Clerk

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