Ranger Housing Associates Limited Partnership

v.

Town of Peterborough

Docket No.: 16258-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of $992,700 (land $84,000; buildings $908,700) on a 5-acre lot with a 30-unit apartment building (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property must be appraised at its highest and best use as a federally subsidized housing project;

(2) in addition to the FmHA financing of 1% for 50 years, the owner receives accelerated depreciations and tax credits the first 10 years; with the Property being currently eight years old, most of the benefits of the tax credits have occurred;

(3) because of government restrictions, investors are looking at an equity rate of at least 12%; and

(4) using actual income and expenses and a capitalization rate of .1413, the Property's value is estimated at $760,300.

The Town argued the assessment was proper because:

(1) the Taxpayer's income and expenses seem reasonable and the only difference of opinion is in the capitalization rate;

(2) the Property receives subsidies from the government to make up the difference in the rent and has minimum vacancy;

(3) the owner receives special financing benefits not available with conventional apartments; and

(4) a capitalization rate of 8% is appropriate which when added to the effective tax rate indicates an overall rate of 11.15%.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry its burden in showing the assessment was disproportionate.

The parties stipulated and the board agrees that the highest and best use of the Property is its continuance as subsidized housing for the elderly as financed by FmHA Section 515. The parties also agreed that in considering the income approach in valuing the Property, the actual subsidized rents and

actual expenses should be used to calculate the Property's net operating income (NOI). The parties disagreed as to what the proper capitalization (CAP) rate to be applied to the NOI should be.

The Property was constructed in 1989 as a FmHA Section 515 subsidized housing for the elderly. The subsidization includes several components. First, the tenants' rents are limited to 30% of their income but the owner's actual average rent received through the subsidy is $460 per month. Associated with the subsidized elderly housing requirements are screening requirements of applicants to determine eligibility and other record keeping requirements for compliance with the FmHA regulations. Second, FmHA financed

75% to 80% of the construction costs for a term of 50 years at 1% interest rate. Third, for the first 10 years life of the Property, the owner receives accelerated depreciation and tax credits against its income tax liability.

The board finds that all aspects of the subsidized package both positive and negative to the Property's value need to be considered in estimating its market value. "In estimating market value for the purposes of taxation, no single method of evaluation is controlling in all cases (Dartmouth Corp. of Alpha Delta v. Hanover, 115 N.H. 26, 332 A.2d 390 (1975)), but all relevant factors to property value should be considered. (Paras v. Portsmouth, 115 N.H. 63, 67-68, 335 A.2d 304, 308 (1975)) Demoulas v. Town of Salem, 116 N.H., 775 (1976). "...[T]o 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, Steele v. Town of Allenstown, 124 N.H., 487 (1984); see Royal Gardens Company v. City of Concord, 114 N.H. 668,671-72, 328 A.2d 123, 124-25 (1974). "[I]n 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 board disagrees with both parties' calculations of the CAP rate because they both attempted to estimate market mortgage interest rates and apply it against the subsidized Property which is mortgaged at non-market interest rates (1% interest for 50 years). The parties focused their arguments on the equity yield rates which make up only 25% of the overall rate. While equity yield rates for this type of property are market derived, combining a market equity rate with market mortgage rates in this case is inappropriate because the debt repayment is based upon a non-market subsidized rate of 1%. It is clear from the cases cited above that all factors positive and negative need to be considered in valuing a property. In this case, the

subsidized mortgage of 1% for a 50 year term is a positive factor the Taxpayer did not consider in its income approach analysis. Thus, the board is unable to give any weight to the Taxpayer's value conclusion.

In short, to apply market mortgage rates to the Property financed by subsidized non-market mortgage rates does not accurately convert its subsidized NOI to a true reflection of the Property's value by the income approach and, therefore, the Taxpayer did not carry its burden.

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 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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

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

date, postage prepaid, to Gregory A. Heyn, Agent for Ranger Housing Assoc. Limited Partnership, Taxpayer; and Chairman, Selectmen of Peterborough.

Date: April 3, 1997

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Valerie B. Lanigan, Clerk