

Madbury Co-Op Inc.

v.

Town of Madbury

Docket No.: 17413-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$749,000 (land \$748,000; buildings \$1,000) on:

Map/Lot Nos.:

11-13, 11-13-2, 11-13-8, 11-13-9, 11-13-10, 11-13-11, 11-13-12, 11-13-13, 11-13-15, 11-13-16, 11-13-17, 11-13-19, 11-13-20, 11-13-22, 11-13-23, 11-13-24, 11-13-25, 11-13-27, 11-13-28, 11-13-29, 11-13-31, 11-13-33, 11-13-34, 11-13-35, 11-13-36, 11-13-37, 11-13-39, 11-13-40, 11-13-41, 11-13-44, 11-13-46, 11-13-48, 11-13-49 and 11-14-51;

a 33-site (plus one common lot) mobile home park owned as a tenants cooperative (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 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 the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased for \$619,831, which included \$87,331 in delinquent taxes;
- (2) the Town's utilization of a \$22,000 site value should be disregarded as it is not based on market data but rather an arbitrary determination by the mortgagee of the Property;
- (3) some of the Town's comparable sales data was inaccurate and, therefore, unreliable; and
- (4) a reasonable market value for the Property would be \$404,250 based on the sales comparison and income approaches to value.

The Town acknowledged the assessment should be reduced by one site value (\$22,000) to reflect the non-income producing capability of the lot that contains the shed with the mailboxes. The Town argued the revised assessment was proper because:

- (1) the highest and best use of the park is as a condominiumized mobile home park;
- (2) the \$22,000 site value was appropriate given the history of four sales in the park for that exact figure and the previous site assessments in the park of \$26,000 plus or minus;
- (3) some of the Taxpayer's representative's data was very outdated and, therefore, unreliable; and
- (4) both a sales comparison and income approach to value support the assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$540,650 based on a market value estimate of \$524,900 and the Town's 1997 equalization ratio of 1.03 ($\$524,900 \times 1.03$).

Several indications of market value were presented in this case. First, the Property, which contained 37 condominium manufactured home lots at the time of the sale, was purchased in 1995 by a tenant's cooperative for a total of \$619,831. The actual sales price was \$532,500 plus \$87,331 in back taxes. Second, four sales of condominium manufactured home sites at \$22,000 occurred subsequent to the cooperative's purchase. Third, both parties presented sales and income approach estimates of market value.

The board considers the purchase of the Property as some indication of its market value, however, not conclusive evidence. Both the testimony and the general nature of the sale raise a question as to whether the sale would meet the definition of an arm's-length transaction. The purchasers were the tenants who formed a cooperative to purchase the Property from the former owner. The tenants exercised their right under RSA 205-A:21 to purchase the Property after notice had been given them by the owner of his intent to sell the park. This situation caused the tenants to be under some pressure to purchase the Property to protect their financial interests. Also, while there was no testimony presented on this issue, the board does note that the deed transferring the Property to the Taxpayer was pursuant to a United States bankruptcy court order. This also casts a shadow, albeit in the other direction, of whether the sales price was reflective of market value.

The board gives no weight to either the four \$22,000 transfers of condominium sites by the Taxpayer since the purchase or the several condominium site sales by the former owner. Based on the testimony, the board concludes the sales that occurred prior to the Taxpayer's purchase of the Property were not arm's-length transactions because they were done under threat

of eviction. Also, the four sales subsequent to the Taxpayer's purchase appear to be above market for several reasons. First, the testimony indicated the individuals who purchased those lots, for whatever reason, did not want to be part of the cooperative. Second, the \$22,000 price is the price the Taxpayer had to agree to in an accelerated repayment of the principle to the two lenders that financed the Taxpayer's purchase of the park and is not a price that fluctuates with the market. Third, testimony was presented that several individuals have had difficulty in obtaining financing at the \$22,000 price. While indeed some of the difficulty may have been with individual finances, part of the bank's reluctance appeared to be related to the \$22,000 price.

The board reviewed the parties' sales and income estimates and, on balance, finds the income approach, in this case, to be the most reliable approach to estimating the Property's value. The sales submitted by both sides are difficult to compare to the Property because of the various factors affecting any one manufactured home park's desirability. Certainly location, size, amenities, condition and age of the park all are factors affecting their desirability in the market. Without further information than that presented by the parties, it is difficult to make such adjustments with any certainty. The Town's attempt to calculate a location adjustment by a comparison of the Property's rents with the comparable rents, in and of itself, is not an inappropriate method. However, the board finds the Property's monthly rent of \$305 appears to be above market and is likely related to the level of taxes that must be recaptured in the rent.

The board has reviewed both parties' income approaches and finds the Property's actual monthly rent of \$305 is in excess of any other rents submitted by the parties. Even the best parks

presented by the Town had monthly rents at \$285 versus the Property's \$305. Based on the submitted photographs and the written descriptions of the other parks, they appear to be at least of the same quality, and in some cases, better quality than the Property. However, balancing this with the lack of any significant vacancy (even at \$305 monthly rent) in the Property and its generally good seacoast area location, the board finds a market rent of \$285 per month is reasonable. It is not appropriate in this case to rely upon the closing pro forma estimates as the Town did because some of the pro forma financial information is incorrect based on the actual Property being appealed.

The board finds an adjustment of 3% for vacancy and bad debt is reasonable based on the park's record of nearly 100% occupancy.

Appropriate expenses are difficult to determine with any certainty here because of the relatively short period of time the Taxpayer has owned the Property and lack of good income and expense statements. However, based on a review of the financial information that was submitted and the Taxpayer's general expense ratio analysis, the board concludes a 30% expense ratio is reasonable.

Based on the parties' capitalization rate calculation, the board determines that an overall rate of 14.6% is reasonable. This rate is comprised of a capitalization rate of 11% and an effective tax rate of 3.6%. The New Hampshire Community Loan Fund (NHCLF) partially financed and facilitated the purchase and remaining financing of the Property. The portion financed by NHCLF was at below market rates. The board concludes this arrangement is neither conventional financing nor is it akin to governmental regulations such as contained in federally

subsidized housing financing arrangements, which could be considered a factor in determining market value. See Steele v. Town of Allenstown, 124 N.H. 487, 491-92 (1984). Consequently, the NHCLF lower interest rate is not utilized in estimating the capitalization rate.

Based on the above findings, the board's income approach estimate is summarized as follows:

Potential Gross Income (33 sites x \$285 per month x 12)	\$112,860
Vacancy Rate (3%)	<u>x .97</u>
Effective Gross Income	\$109,474
Expense Ratio (30%)	<u>x .70</u>
Net Operating Income	\$ 76,632
Capitalization Rate	<u>÷ .146</u>
Indicated Market Value	\$524,900 (rounded)

The resulting market value indicates a per-site value of approximately \$15,900 (\$524,900 ÷ 33). The board finds this site value is reasonable given the Property's ability to be sold as individual condominium sites, a right not contained in the sales of the other parks presented by the parties.

If the taxes have been paid, the amount paid on the value in excess of \$540,650 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 1998. 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 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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David Irwin, Representative for Madbury Co-Op Inc., Taxpayer; and Chairman, Board of Selectmen of Madbury.

Date: October 5, 1999

Lynn M. Wheeler, Clerk