Belmar/PAG Limited Partnership

v.

City of Nashua

Docket No.: 18345-99PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of $2,499,900 (land $1,199,600; buildings $1,300,300) on a 5.75-acre parcel of park industrial-zoned land improved with four interconnected one-story apartment buildings containing 45 units of subsidized elderly living (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); 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) an April, 1999 appraisal ("Hinkle Appraisal") estimated the market value to be $1,950,000;

(2) the buildings have functional obsolescence due to their one-story configuration, layout and electric heat;

(3) the Property is subject to subsidized housing restrictions imposed by Department of Housing and Urban Development ("HUD") and increases in rents have been regulated by HUD;

(4) the small number of units (45) make it economically inefficient to manage; and

(5) the Property's land assessment is disproportionate to other land assessments of subsidized housing or apartments in the City and the buildings, due to being one-story, are an economic mis-improvement.

The City argued the assessment was proper because:

(1) a review of the Hinkle Appraisal performed by Andrew LeMay ("LeMay Review") indicated a market value of $2,750,000;

(2) the LeMay Review found the income approach to be the most applicable method of estimating the Property's market value largely due to its income-producing nature;

(3) the LeMay Review income approach relied largely on the Property's actual income and expenses because the Property is regulated by HUD as subsidized housing;

(4) the City utilized a lower capitalization ("CAP") rate due to assumptions of a higher loan-to-value ratio, a 3% annual appreciation of the Property, the assumability of the Taxpayers' initial 7.5% mortgage, a lower equity rate and a lower effective tax rate utilizing a City calculated ratio of .91;

(5) the City's level of assessment is more accurately indicated by the City's calculated ratio of .91 than the department of revenue administration's (DRA) ratio of .85; and

(6) the LeMay Review estimate of $2,750,000 and the City's ratio of .91 support the City's assessment of $2,499,900.

Board's Rulings

This appeal raises three general issues: 1) how government regulations should be considered in valuing subsidized housing; 2) the resulting estimate of market value; and 3) the City's 1999 level of assessment.

Governmental Regulations

The Property consists of 45 units of affordable housing for low-income residents and is regulated under a Housing Assistance Program Contract ("Contract") entered into with HUD in 1980. The Contract has a number of regulations that positively or negatively affect the Property's value.

It is well established New Hampshire case law that when a property is encumbered with governmental regulations that can affect market value, those regulations must be considered when valuing the property. Steele v. Allenstown, 124 N.H. 487, 491-92 (year); Paras v. Portsmouth, 115 N.H. 63, 67-68 (1995); Demoulas v. Town of Salem, 116 N.H. 775, 781 (1976); and Royal Gardens Co. v. Concord, 114 N.H. 668, 671-72 (1974).

While not an exhaustive list, the following are some of the Contract's aspects that have an affect on the Property's market value:

- The Contract provides low income housing tax credits to the limited partners of the Taxpayer;
- Rents are set by HUD which at times may either be above or below market;

- The tenants' portion of the rent is based on a fixed percentage of their income and the difference is paid to the Taxpayer by HUD;
- HUD pays rent for up to three months on vacant units that are ready to be rented;
- HUD has various management, financial reporting and budgetary requirements that increase management expenses compared to unregulated housing;
- HUD requires specific replacement reserve payments be escrowed; and
- There is uncertainty as to continued long-term funding by the federal government of such HUD subsidized rental agreements.

Consequently, based on the cited case law and the Contract, any valuation analysis must incorporate the effect of the Contract's regulations in its value estimate. For this reason the board is unable to give any weight to the assessment comparisons contained in Taxpayer Exhibit #3. Some of the assessment comparables are unregulated properties and, while others are of regulated properties, the nature of their governmental regulations was not presented to determine any comparability.

As discussed in more detail in the next section, the board finds the income approach, utilizing the Property's actual income and expense data (and thereby inherently recognizing any positive or negative effect of the governmental regulations), forms the best basis for valuing the Property.

Market Value Estimate of Property

There are three approaches to value: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate 71 (10th ed. 1992).

While there are three approaches to value, not all three approaches are of equal import in every situation. Id. at 72; International Association of Assessing Officers, Property Appraisal and Assessment Administration 108 (1990). In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).

While some evidence was submitted by both the Taxpayer and the City relative to a valuation estimate by the cost and sales approaches (including some comparative assessment information), the board is unable to place much weight on those valuation/assessment conclusions as they did not in all cases recognize the effects of governmental regulations as discussed in the previous section.

Consequently, the board has estimated the Property's market value by the income approach utilizing income and expense information submitted by both sides and utilizing the best data and most reasonable assumptions contained in the parties' evidence and testimony. Nashua at 264. As stated earlier, the board finds the Property's actual income and expense information inherently captures the positive and negative effects of the regulations discussed in the first section of this decision. The board will, step by step, address the various components of the income approach and describe the reasons for the assumptions in each step.

Property Income

The board finds the parties, in the Hinkle Appraisal and the LeMay Review, agreed to the potential rental income of $480,780 as shown in the 1997 and 1998 HUD statement of profits

and loss forms ("Statements") (Municipality Exhibits B2 and B3).

The board estimates an additional annual revenue of $4,500 from several miscellaneous sources should be added to the rental potential gross income to reflect the total potential income of the Property. The parties testified there was an additional rental charge for units with air conditioning to offset the expense of the air conditioning units. The board estimated this income at approximately $2,000 based on the three-year Statements. Next, income relative to the laundry and vending facilities is estimated at $1,500 a year. This is less than the actual annual income of $2,400 to $2,600 to recognize that a portion of the income is related to the personal property of the laundry and vending machines while some is related to their location in the real estate. The board also finds the interest income from the investment of the reserve for replacement accounts required by the Contract should be accounted for as income related to the real estate because it is part of the requirement of operating the real estate as a subsidized housing project. However, the board finds the interest income from the "project operation" may be more related to business income as opposed to real estate income, and without further evidence as to the source of the fund, the board declines to find it is a real estate related revenue. Consequently, the board estimates the interest from reserves for replacement investment to be approximately $1,000. In summary, the total estimated potential income from the Property is $485,300 (rounded) (potential rental income of $480,780 plus miscellaneous income of $4,500).

Vacancy

The Taxpayer argued that a vacancy of 3% should be utilized as that is the vacancy calculation required by HUD in the budgetary process for the Property. We disagree. The actual annual vacancy as shown on the Statements ranged from 0% to .75%. The board finds the actual

vacancies are likely so low due to two facts: 1) the high demand for such units; and 2) the provision in the Contract that HUD will pay up to three months rent for units that are available to be rented. It is clear from the low actual vacancies that, due to the demand and good management, the units are rented in a very timely fashion. The board finds the 3% budgetary vacancy should not be controlling in calculating this Property's value. Any prospective purchaser would review the recent Statements and realize the vacancy exposure is very minimal and would not allocate the 3% budgetary amount. The board has estimated a vacancy rate of 1% which is slightly higher than the actual vacancy history. However, on one hand, the $4,800 (rounded) reduction in income is a modest deduction and, on the other hand, by being slightly higher than actual vacancy history tends to dampen the owner's risk as reflected in the CAP rate. This vacancy deduction results in an effective gross income of $480,500 ($485,300 - $4,800).

Expenses

In determining what reasonable expenses should be deducted from the effective gross income, the board reviewed the Taxpayer's actual expenses for the previous three fiscal years contained in the Statements, the stabilized expenses contained in the Hinkle Appraisal and the City's estimated expenses contained in the LeMay Review. While the difference in expense estimates between the Hinkle Appraisal and the LeMay Review is fairly minimal, the board has primarily utilized the expenses in the Hinkle Appraisal because they are stabilized and estimated in a fashion similar to how a prospective buyer would estimate them. However, the board has made three modifications to the Hinkle Appraisal expenses. First, the board has increased the administrative expense estimate from $71,000 to $73,600 to reflect the approximately $2,600 in payroll expenses contained in the Statements. These are taxes related to personnel necessary to

manage and maintain the Property and, thus, are appropriately deducted. Second, the board has adjusted the insurance line item to include workman's compensation premium for a total of $11,700. Third, the board has not added any additional "miscellaneous expense" because the administrative and maintenance expense estimates are drawn from the Statements which include miscellaneous line items in both those two categories. In summary, the expenses are as listed below.

Administrative Expense	$ 73,600
Utility Expense	$ 63,000
Operating and Maintenance Expense	$ 66,000
Insurance	$ 11,700
Replacement Reserves	$ 5,500 (rounded)
Total	$219,800

Subtracting the expense estimate from the effective gross income arrives at a net operating income of $260,700 (rounded) ($480,500 - $219,800).

Capitalization Rate

The Property was originally financed in 1980 by a mortgage note of $1,543,000 with an interest rate of 7.5%. The board agrees with the City that because the note is assumable and because 7.5% rate is below the market interest rate for 1999, the assumption of the remaining amount of the note would be a factor affecting the sale price of the Property. Based on the Taxpayer's evidence, the remaining balance of the note in 1999 was just under $1,300,000. Consequently, a significant portion of the Property would have to be conventionally financed or financed through owner equity. In calculating the CAP rate by the mortgage equity technique,

the board has estimated a weighted interest rate of approximately 8.1%, based on a loan-to-value ratio assumption of 80%, a market mortgage interest rate of approximately 9.3% to 9.4% and an approximation that the favorable 7.5% interest rate would comprise approximately 60% to 70% of the total borrowed funds. Without a definitively known market value, the board acknowledges the circular nature of such a calculation. However, based on the evidence submitted, the board believes the 8.1% weighted interest rate is reasonable and, most importantly, is reflective of the analysis a prospective purchaser would undertake.

The board finds a 12% equity rate, rather than 15%, reflects the inherent risk to the owner of the Property. On balance, the board finds the Property to be a relatively low-risk investment with a number of assurances either built into the Contract or having been shown through historical financial data. Examples of these factors is the Contract provision that reimburses the owner for rentable vacancy time up to three months and the Property's history of market rents at or, at times, above market level. The board does acknowledge the Taxpayer's comments that there is no guarantee that federal budget support for such programs will continue indefinitely; however, on the other hand, the board finds that in recent times there has been a history of strong support for ensuring the availability of low-income housing through such programs and a prospective purchaser would have a reasonable expectation that it would continue in the near future.

The board finds a modest 1% annual appreciation rate for a ten-year holding period, as contained in the Hinkle Appraisal, is more realistic than the City's more aggressive 3% annual appreciation rate which was based on the subsidized rental rate history in the Nashua area but not on the Property itself.

Both parties agreed that the full value tax rate, if equalized by a ratio of 85%, was 2.2%. Based on the board's findings as to the 85% level of assessment in the following section, the board finds the 1997 effective tax rate to be 2.2%.

Utilizing a weighted mortgage interest rate of 8.1%, a remaining term of the mortgage of 22 years, a loan-to-value ratio of 80%, an equity rate of 12% and a 1% appreciation for a holding period of ten years, the indicated CAP rate is 8.48%. Combining the effective tax rate of 2.2% arrives at an indicated overall CAP rate of 10.68%. Utilizing the gross potential income, vacancy and expenses from the previous sections, the value is calculated as follows.

Gross Potential Income		$ 485,300
Less Vacancy		$ 4,800
Effective Gross Income		$ 480,500
Less Total Expenses		$ 219,800
Net Operating Income	$ 260,700	
Divided by Capitalization Rate		$ .1068
Indicated Market Value		$2,441,000 (rounded)

Level of Assessment

For the following reasons, the board finds the City's calculated ratio of 91% does not accurately represent the City's April 1, 1999 level of assessment. Rather, we find, as argued by the Taxpayer, the 1999 ratio of 85%, determined by DRA as part its RSA 21-J:3, XIII equalized valuation responsibilities, better estimates the City's 1999 level of assessment. Id. at 265-266. (The Taxpayer's reliance on DRA's ratio, barring convincing evidence from the municipality as to a different ratio, satisfies its burden of proof as to the level of assessment).

Equitable assessments result when the following procedures occur: 1) proper identification of taxable real estate rights; 2) market-based valuation of those real estate rights (appraising); and 3) relating those appraised values to the municipality's level of assessment

(assessing). Errors in any one procedure will result in an assessment not being ". . . proportional and reasonable . . ." (either too high or too low) as required by Pt. II, Art.5 of the New Hampshire Constitution.

Several statutes, jointly read, address the first two procedures. RSA 21:21 and 72:6 define "real estate" and that "[a]ll real estate, whether improved or unimproved, shall be taxed except as otherwise provided." RSA 74:1 and 2 require the assessors to, on April 1, annually take an inventory of all taxable and exempt real estate within their taxing jurisdiction. RSA 76:2 establishes the property tax year as ". . . April 1 to March 31 and [that] all property taxes shall be assessed on the inventory taken in April of that year." RSA 75:1 and 75:8 require the assessors to review annually and appraise all taxable property. In short, municipalities must, for each tax

year, take an inventory as of April 1 of all taxable and exempt property and must annually appraise all taxable property at market value.

As stated earlier, Pt. II, Art. 5 requires that assessments be proportional. No statute directs how appraised values are to be made proportional to a municipality's level of assessment, and thus, become proper assessed values. However, Nashua is instructive in this matter. Municipalities have a "...preexisting obligation to 'use *some* method to equalize tax assessments to insure proportionality.' If a municipality does not use a uniform equalization ratio to ensure proportional assessments, it will have violated its obligation to appraise property fairly for tax purposes. *See* RSA 75:1:8 (1991). '[O]ur constitution mandates that all taxpayers in a town be assessed at the same proportion of [fair market value].'" Id at 266 (citations omitted; emphasis

in original). "In order to determine the appropriate assessed value for a property, the board must make specific findings regarding the property's market value and the equalization ratio by which to discount the market value to an assessed value." Id at 263.

Consequently, an assessment-to-sales ratio analysis must be performed on a reasonably representative sample of sales in the taxing jurisdiction, see Snow v Rochester, 119 N.H. 181 (1979), to produce a ratio "to discount market value to an assessed value." Further, for any sales ratio to be a valid indication of a municipality's level of assessment, it must be calculated as of April 1, the same date as the statutory inventory and appraisal date. The Standard on Ratio Studies, International Association of Assessing Officers (1999) at 5.3, 5.4 and 6.5 states sales prices utilized in ratio studies should be adjusted to the date of analysis/assessment if there is a difference in market level between the date of sale and the date of analysis.

In this case, the City's ratio study is based on sales that occurred from April 1, 1998 to March 31, 1999. The City argued this time period was more appropriate than the later time period utilized by DRA (October 1, 1998 to September 31, 1999) because it reflects the most recent sales known and available to the assessors as of April 1, 1999. The City, however, did not time adjust the sales prices to the effective date of the analysis, April 1, 1999. This might have been appropriate if the market was flat during this time period; however, the evidence indicates that real estate in Nashua was appreciating at a measurable and significant rate in 1998 and 1999. By not time adjusting the sales prices, the City's resultant ratio of 91% is a measure of the City's level of assessment at some mid-point during the sample time period (September/October) but, not as of April 1, 1999.

The DRA's ratio study, on the other hand, is more reflective of the April 1, 1999 level of

assessment because its sample time period straddles the April 1 assessment date. This method of having the sample time period straddle the assessment date nullifies the need to time adjust sales prices if indeed the rate of market change and the number of sales on either side of the assessment date are approximately the same. No evidence was submitted to the contrary. Consequently, the board finds the DRA's ratio of 85% is more reflective of the City's 1999 level of assessment than the City's calculation of 91%.

Conclusion

Applying the 1999 level of assessment (85%) to the market value estimate of $2,441,000 results in a proper assessment of $2,074,850. The board has not allocated the value between land and buildings, and the City shall make this allocation in accordance with its assessing practices.

Refund

If the taxes have been paid, the amount paid on the value in excess of $2,074,850 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 City has undergone a general reassessment, the City shall also refund any overpayment for 2001 and 2002. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Rehearing

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.

City's Request for Findings of Fact and Rulings of Law

In these responses, "neither granted nor denied" generally means one of the following:

a. The request contained multiple requests for which a consistent response could not be given;

b. The request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. The request contained matters not in evidence or not sufficiently supported to grant or deny;

d. The request was irrelevant; or

e. The request is specifically addressed in the decision.

1. Granted.

2. Granted.

3. Granted.

4. Granted.

5. Neither granted nor denied.

6. Granted.

7. Granted.

8. Neither granted nor denied.

9. Denied.

10. Neither granted nor denied.

11. Neither granted nor denied.

12. Granted.

13. Denied.

14. Neither granted nor denied.

15. Neither granted nor denied.

16. Neither granted nor denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Mark Lutter, representative for the Taxpayer; David R. Connell, Esq., counsel for the City; and Chairman, Assessors of Nashua; and Wil Corcoran, Interested Party.

Date: June 5, 2002

_____
Anne M. Bourque, Deputy Clerk

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Belmar/PAG Limited Partnership

v.

City of Nashua

Docket No.: 18345-99PT

ORDER

The board is in receipt of the "Taxpayer's" Motion for Enforcement and Motion for Rehearing ("Motions"), received on July 5, 2002, and the "City's" Objection to Motion for Enforcement and Objection to Motion for Rehearing ("Objections"), received on July 10, 2002.

The board denies the Motions for all the reasons contained in the Objections.

Pursuant to RSA 541:6, any appeal of this order by the Taxpayer to the supreme court must be filed within thirty (30) days of the date on this order.

SO ORDERED.

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the above order has been mailed this date, postage prepaid, to

Mark Lutter, representative for Belmar/PAG Limited Partnership, Taxpayer; David R. Connell, Esq., counsel for the City of Nashua; and Chairman, Board of Assessors of Nashua.

Date: July 23, 2002

_____

Anne M. Bourque, Deputy Clerk

Belmar/PAG Limited Partnership

v.

City of Nashua

Docket No.: 18345-99PT

ORDER

Pursuant to the New Hampshire Supreme Court's July 22, 2003 remand order ("Remand Order"), this order makes specific findings relative to whether the "City's" subsequent 2000 assessment utilized the City's ". . . incorrect 1999 value as a base against which it applied a formula to increase the property's value in 2000." Remand Order at pg. 2.

Procedural Chronology

This matter arose from a 1999 RSA 76:16-a property tax appeal filed with the board on which, in a decision dated June 5, 2002 ("Decision"), the board granted an abatement. On July 3, 2002, the "Taxpayer" filed a motion for enforcement ("Motion") arguing the Decision should have been carried forward for the 2000 tax year. The board denied the Taxpayer's Motion based on the City's assertion in its July 9, 2002 objection to the Motion that the 2000 assessment was as the result ". . . of adjustments to property strata after analysis of sales and assessment data . . . ." The Taxpayer then appealed to the supreme court. In its Remand Order, the supreme

court vacated the Decision and remanded it to the board to make specific findings as to whether its Decision had any subsequent-year application under RSA 76:17-c. The board held a hearing on November 6, 2003 and heard arguments from the Taxpayer and the City.

Board Findings

For the reasons that follow, the board finds the City reappraised the "Property" pursuant to RSA 75:8 by performing a municipal-wide statistical update of property by strata based on analysis of sales and income and expense information.

The applicable statutory and case law standards are succinctly summarized in the court's Remand Order.

> "Pursuant to RSA 76:17-c, II, if the BTLA 'determines that an assessment is incorrect, the [city] shall abate taxes assessed for years following the incorrect assessment even if the taxpayer did not appeal those taxes.' Sprague Energy Corp. v. Town of Newington, 142 N.H. 804, 806 (1998); see RSA 76:17-c, II. On the other hand, once the city conducts a general reassessment or reappraises the property in good faith pursuant to RSA 75:8, the city's obligation to apply the corrected assessment to subsequent tax years is extinguished. Hanover Inv. Corp. v. Town of Hanover, 145 N.H. 377, 381 (2000); see RSA 76:17-c, I."

The City's assessor, Mr. Angelo Marino ("Mr. Marino"), testified that the last complete reassessment that involved City-wide measuring and listing of property was in 1992. The City has since performed assessment updates in 1997 and 1998 and again in 2000.

Mr. Marino stated the 2000 update, which resulted in a reappraisal of the Property as provided in RSA 75:8, involved numerous steps and analyses including the following. The City initially performed various sales ratio analyses to determine what property strata needed to be reviewed and adjusted to the targeted common level of assessment of 100%. Sales of the previous two years were reviewed of all types of properties in these stratified sales analyses.

Rental income and expense information for industrial and commercial properties were also analyzed to determine what adjustments were appropriate for such properties. Residential properties were analyzed on a sales price-per-square-foot basis to determine the need and magnitude of adjustment. The land-only sales were also reviewed for any appropriate adjustments on land assessments. The City then modified its building and/or land assessment models (base rates, depreciation, etc.), based on the analyses, recalibrating the different aspects of the assessment models where necessary to achieve full-market value on a property-strata basis. These assessment model recalibrations were then evaluated by performing further sales ratio studies to test the effectiveness of the model changes relative to the targeted assessment level and accepted standards of assessment deviation. The resulting values of all properties throughout the City were further compared on an intra-strata basis to determine if proportional assessments had been arrived at for similar properties. The City then sent out notices to taxpayers as to the new values, and provided an opportunity for review and abatement discussions.

The board finds this extensive market review and analysis, which resulted in new municipal-wide assessments, is a reappraisal of property pursuant to RSA 75:8, and thus, the board's 1999 ordered assessment is barred from being carried forward to 2000. Because the reappraisal utilized existing physical data descriptions, the 2000 update is not a "general reassessment" (RSA 76:17-c; TAX 203.05(c)(2); and Rev. 603.01); it is, however, a reappraisal as provided for in RSA 75:8.

The board need not decide which version of RSA 75:8 applies to the City's reappraisal process (either the 2000 supplement or the 2001 supplement) because both contain provisions

that assessors shall annually reappraise all real estate that has changed in value. We find this is exactly what the City did on a municipal-wide basis. Other than reliance upon the existing measurements and physical listings, the 2000 assessment did not rely on the 1999 assessment as a basis. The Taxpayer argues that is not the case because the land assessment was the same for both years. However, based on the testimony of Mr. Marino, the board finds that the City's assessment methodology looked at both land and building components in its 2000 reappraisal and made a new determination that the land allocation of the assessment was reasonable and only made adjustments to the building component. Inasmuch as the board is required to look at the Taxpayer's value as a whole (Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985)), the mere fact that the land value remained the same based on the City's review of market evidence in 2000 does not form a basis for carrying the 1999 assessment forward in the fashion envisioned in RSA 76:17-c.

The Taxpayer argued that two provisions of the board's rule TAX 203.05, which is intended to implement RSA 76:17-c, require that once an ordered assessment has occurred, a municipality may make good-faith adjustments in subsequent years but only to the ordered assessment. The Taxpayer pointed to the wording in TAX 203.05(c)(3) "[g]ood-faith reason or adjustment means a change made to an ordered assessment . . ." and TAX 203.05(g) "[t]he Municipality may adjust the ordered assessment for the subsequent tax years if there is a good-faith reason for such adjustment in accordance with RSA 75:8 and RSA 76:17-c." (Emphasis added.) The Taxpayer argues that those two rules envision good-faith adjustments can only be made to the board's "ordered assessment" rather than a good-faith adjustment as the result of an 75:8 reappraisal. We find such reading and interpretation of the board's rule is too narrow and in

conflict with the balance of TAX 203.05 and, more importantly, with RSA 76:17-c. RSA 76:17-c does not state that a "change" or "adjustment" is made to the "ordered assessment" for a good-faith basis but simply says that the assessor shall use the "ordered assessment" ". . . until such time as they, in good faith, reappraise the property pursuant to RSA 75:8 due to changes in value, or until there is a general reassessment in the municipality." As the board has found, the City did perform an RSA 75:8 reappraisal which changed the assessment of the Property due to an analysis of the market along with all other properties in the City. Further, TAX 203.05(n)(3) states that a subsequent year appeal is required to protect the taxpayer's rights when "[t]he assessment appealed in the original appeal has changed significantly due to a good-faith reason or adjustment." Here, the subsequent 2000 assessment of $2,828,200 had "changed significantly" based on the City's 2000 reappraisal analysis and methodology from the 1999 assessment of $2,499,900 and, thus, a new appeal for tax year 2000 was necessary to contest the new assessment.

The board also finds there is basis for the Taxpayer or its tax consultant, Mr. Mark Lutter, to have known that the 2000 valuation was the result of an RSA 75:8 reappraisal and, thus, would not be affected by any abatement subsequently ordered by the board in the 1999 appeal. Mr. Marino testified the process of performing the 2000 reappraisal received significant media attention through the political process of the board of aldermen appropriating the funds for the reassessment and later with information on the City's web page relative to the new valuations as a result of the 2000 reappraisal. The Taxpayer or its representative could have concluded that the tax year 2000 valuation was significantly different from the 1999 assessment by either an inquiry of the assessor's office as to the basis of the 2000 assessment or by a review of the

assessment-record card to then have timely filed a subsequent year appeal (2000) to protect the appeal rights of the Taxpayer.

In summary, based on the evidence as to the process the City undertook in performing its 2000 reappraisal, it is clear that the City did not rely upon the 1999 valuation as a base for the 2000 assessment, but rather, based it upon a reappraisal after a municipal-wide review of new market data. Such reappraisal extinguishes the subsequent year effect of an earlier ordered abatement, and thus, the board denies the Taxpayer's Motion.

Board's Response to City's Requests for Findings of Fact and Rulings of Law

The "Requests" received from the City are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the Requests, "neither granted nor denied" generally means one of the following:

a. The Request contained multiple requests for which a consistent response could not be given;

b. The Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. The Request contained matters not in evidence or not sufficiently supported to grant or deny;

d. The Request was irrelevant; or

e. The Request is specifically addressed in the decision.

1. This case was remanded by the New Hampshire Supreme Court for further proceedings consistent with the Court's Order dated July 22, 2003 in Supreme Court Case No. 2002-0540.

Granted.

2. The case was originally an abatement appeal for tax year 1999 decided by the Board by decision dated June 5, 2002, which granted a partial abatement.

Granted.

3. The Taxpayer had appealed to the Supreme Court from the Board's denial of Taxpayer's Motion for Enforcement to compel the City to issue refunds for tax year 2000-2002, to which the City had objected on the ground that (a) it had changed assessments city-wide for tax year 2000 and (b) Taxpayer had not appealed its new 2000 assessment.

Granted.

4. As stated in the Supreme Court Order of July 22, 2003, "once the City conducts a general reassessment or reappraises the property in good faith pursuant to RSA 75:8, the City's obligation to apply the corrected assessment to subsequent tax years is extinguished. Hanover Inv. Corp. v. Hanover, 145 N.H. 377, 381 (2000); see RSA 76:17-c I."

Granted.

5. N.H. Admin Code REV 603.01 has the following definitions: (d) "Full revaluation" means a complete measure, listing and valuation of all taxable and nontaxable properties in a municipality; (j) "Partial revaluation" means . . . An appraisal of all properties using less than a complete data collection effort; and (k) "Update" means adjusting the valuations of all or specified portions of a municipality.

Granted.

6. TAX 203.05 contains the following definitions: (2) "General reassessment" means the process undertaken by a municipality to reassess all property in the municipality, and which a) Includes collecting physical data through reinspection and remeasurement; b) Includes analyzing sales; and c) Includes appraising all property at the same percentage of market value; but d) Does not include annual or periodic adjustments to assessments;

(3) "Good-faith reason or adjustment" means a change made to an ordered assessment due to: a) Omission or error on the assessment card; b) Physical change to the property; c) Adjustments to property strata after analysis of sales and assessment data; d) Change in highest and best use; or e) External factors affecting value, such as, laws, ordinances, and changes in neighborhood.

Granted.

7. Under TAX 203.05 – Pending Appeals, Effect of Ordered Assessment, and Appeals for Subsequent Years, a taxpayer must file a separate abatement appeal for "a subsequent year" when "the assessment appealed in the original appeal has changed significantly due to a good-faith reason or adjustment." TAX 203.05 (n) (3), which the municipality is empowered to do under RSA 75:8 and 76:17-c.

Granted.

8. In a mass appraisal system annual value updates can be performed using ratio studies to derive trending factors based on stratification by property type, location, size, age, and the like. International Association of Assessing Officers, Property Appraisal and Assessment Administration, 308-310 (1990).

Granted.

9. Market-based trending factors developed from information provided by ratio studies can be used to adjust appraisal levels to acceptable standards. Id. 517-518.

Granted.

10. Under TAX 203.05(k), at a hearing on a motion to compel refunds for subsequent tax years "the Board shall only hear evidence on whether the municipality had a good-faith reason for not using the ordered assessment. The Board shall not receive any other evidence or arguments."

Granted.

11. In particular, the Supreme Court Order identified a factual question "as to whether the City used the incorrect 1999 value as a base against which it applied a formula to increase the property's value in 2000."

Granted.

12. For tax year 2000, for the purpose of improving uniformity and proportionality of assessments city-wide, the City, in good faith and in accordance with accepted property assessment standards and methodologies, performed a city-wide reappraisal including but not limited to the following steps:

- gather and verify sales data and commercial-industrial income and expense data
- stratify the data by submarket

- analyze the data for measurements of central tendency and dispersion in submarkets
- use the analysis to modify the tables in the mass appraisal model
- generate new assessed values for each property from the modified mass appraisal model

Granted.

13. The 2000 change in assessments was a good faith reappraisal of Taxpayer's property for purposes of RSA 75:8 and 76:17-c I.

Granted.

14. The 2000 change in assessments "changed [Taxpayer's 1999 assessments] significantly due to a good-faith reason or adjustment" for purposes of Tax 203.05(n)(3).

Granted.

15. The 2000 change in assessments did not "use the incorrect 1999 value as a base against which it applied a formula to increase the property's value in 2000" within the meaning of the Supreme Court Order dated July 22, 2003.

Granted.

16. Consequently, under the applicable statutes and rules, the Taxpayer was required to have filed an abatement appeal for tax year 2000 in order to receive abatements for tax years 2000, et. seq.

Granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing order has this date been mailed, postage prepaid, to: David E. LeFevre, Esq., Bossie, Kelly, Hoses, Buckley & Wilson, P.A., 440 Hanover Street, Manchester, New Hampshire 03104, counsel for Belmar/PAG Limited Partnership, Taxpayer; David R. Connell, Esq., Corporate Counsel, 229 Main Street, Post Office Box 2019, Nashua, New Hampshire 03061-2019, counsel for the City of Nashua; Chairman, Board of Assessors, City of Nashua, Post Office Box 2019, 229 Main Street, Nashua, New Hampshire 03061-2019; Wil Corcoran, Post Office Box 1175 Wolfeboro Falls, New Hampshire 03896, Interested Party; and Mark Lutter, Northeast Property Tax Consultants, 37 Crystal Avenue, PMB 290, Derry, New Hampshire 03038, Interested Party.

Date: December 31, 2003 _____
Anne M. Stelmach, Deputy Clerk

Belmar/PAG Limited Partnership

v.

City of Nashua

Docket No.: 18345-99PT

ORDER

This order responds to the Taxpayer's Motion For Rehearing ("Motion") filed on January 27, 2004 with respect to the order ("Order") dated December 31, 2003 and the City's Objection to the Taxpayer's Motion for Rehearing ("Objection") filed on February 3, 2004. For the reasons that follow, the Motion is denied.

The Motion presents several arguments for a rehearing.

First, the Motion asserts the board's finding that the Taxpayer could have concluded a tax year 2000 appeal was necessary due to the increase in the assessment from 1999 is both contrary to the purpose of RSA 76:17-c and not supported by the evidence. Not so. RSA 76:17-c is intended to relieve taxpayers of the necessity to file subsequent year appeals when an appeal of a property is pending and the assessment in the subsequent years is the same as the assessment under appeal. When a municipality reappraises the property pursuant to RSA 75:8, as the board

finds the City did in this case, the taxpayer is not protected by the subsequent year statute and must file a subsequent abatement and appeal as it is a new action. Hanover Inv. Corp. v. Town of Hanover, 145 N.H. 377, 382 (2000). As noted on pages 3 - 5 of the Order, while the land component of the total assessment did not change and there was no new measuring or listing of the Property, the total assessment did change significantly (from $2,499,900 in 1999 to $2,828,200 in 2000) based on the RSA 75:8 update performed by the City. To say the record does not support the board's contention that the Taxpayer could have discerned the need to file a subsequent appeal due to this significant and noticeable increase in the assessment ignores this glaring fact.

Second, the Motion contends that because the board precluded the Taxpayer's attorney from detailed questioning of the City as to the exact market data it utilized in the update and how the City analyzed it relative to the appealed Property, no evidence was then provided as to the propriety of the City's 2000 assessment. Such in-depth review of the basis of the City's 2000 assessment would only be ripe if a timely filed 2000 appeal had occurred giving the board subject matter jurisdiction for tax year 2000. On remand from the supreme court, the board was required to make detailed findings as to whether and how the City made "adjustments to property strata after analysis of sales and assessment data" but not whether such adjustments resulted in a proper 2000 assessment for the Property. The Order makes detailed findings at pages 2 – 3 and concluded that "this extensive market review and analysis, which resulted in new municipal-wide assessments, is a reappraisal of property pursuant to RSA 75:8, and thus, the board's 1999 ordered assessment is barred from being carried forward to 2000." (Emphasis added.)

Third, and last, the Motion contends the board "disregards its own rules as 'too narrow'"

relative to the definition of "good faith adjustment." As the Order clearly indicates at pages 4 – 5, the board dismissed the Taxpayer's "reading and interpretation of the board's rule [as] too narrow" and that the statute, RSA 76:17-c, and all the rules that implement it need to be considered collectively rather than in isolation of each other as to how a good faith adjustment is to be made. N. H. Dep't. of Resources and Economic Dev. v. Dow, 148 N.H. 60, 63 (2002); Great Lakes Aircraft Co. v. City of Claremont, 135 N.H. 270, 277-78 (1992). (The board must read the language at issue in the context of the entire statute and the statutory scheme).

Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days from the date on the board's denial. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: David E. LeFevre, Esq., Bossie, Kelly, Hoses, Buckley & Wilson, P.A., 440 Hanover Street, Manchester, New Hampshire 03104, counsel for Belmar/PAG Limited Partnership, Taxpayer; David R. Connell, Esq., Corporate Counsel, 229 Main Street, Post Office Box 2019, Nashua, New Hampshire 03061-2019, counsel for the City of Nashua; Chairman, Board of Assessors, City of Nashua, Post Office Box 2019, 229 Main Street, Nashua, New Hampshire 03061-2019; Wil Corcoran, Post Office Box 1175 Wolfeboro Falls, New Hampshire 03896, Interested Party; and Mark Lutter, Northeast Property Tax Consultants, 37 Crystal Avenue, PMB 290, Derry, New Hampshire 03038, Interested Party.

Date: February 13, 2004 _____

Anne M. Stelmach, Deputy Clerk