The war to remain tax exempt

Why some nonprofits are losing tax-exempt status on residential properties

By Jessica VanEgeren

When Attic Angel Prairie Point, Inc decided to build a senior living community in the city of Madison, it went through the typical steps required with any construction project. Like other developers, it first touched base with the city of Madison. Its reason, however, was different.

Attic Angel needed assurance that the project would be granted tax-exempt status, essentially freeing up hundreds of thousands of dollars for maintenance costs and to keep housing costs low.

"We were told it would be exempt, so we proceeded with the feasibility study, broke ground and started to market the project," said Mary Ann Drescher, the group's president. "Then we received word

INTERVIEWEES

Dave Cieslewicz, City of Madison | Michael Kurth, City of Madison | Mary Ann Drescher, Attic Angel Prairie Point Inc | Steven Schooler, Porchlight Inc | Frank Staniszewski, Madison Development Corp

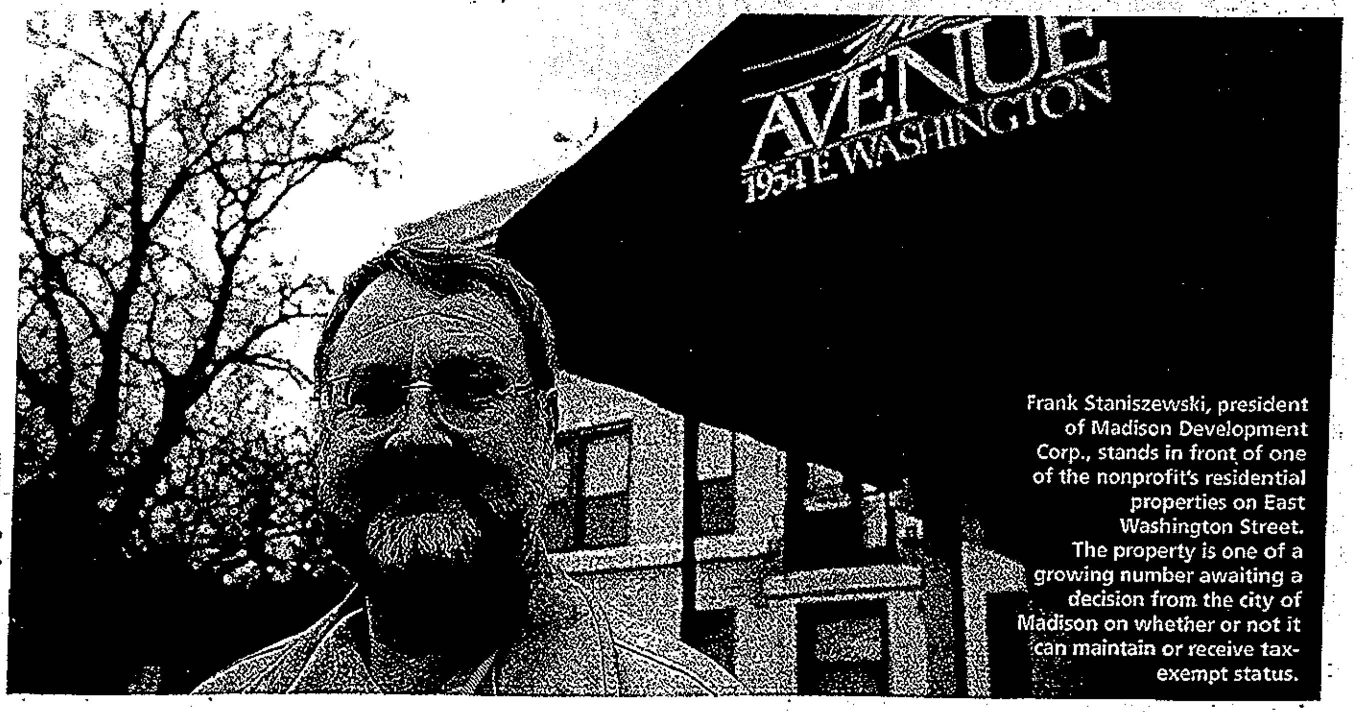

Photo by: B. Wolfgang Hoffmann

Frank Staniszewski, president of Madison Development Corp., stands in front of one of the nonprofit's residential properties on East Washington Street. The property is one of a growing number awaiting a decision from the city of Madison on whether or not it can maintain or receive tax-exempt status.

that things had changed "

Before construction was completed, the city of Madison sent out a tax bill Attic Angel sued, but eventually ended up dropping the case The uncertainty was too much for the residents, Drescher said

Consequently, the cost to live at Prairie Point jumped $300 to $400 a month, depending on the size of the unit. Last year, Prairie Point paid $360,000 in property taxes

"It's really difficult when the rules shift in the middle of the game," Drescher said "But this isn't a game People are relying on us My major concern is still the inequity in all of this Not all senior centers are being taxed "

Other nonprofit organizations across the city of Madison have found themselves in similar situations. After years of enjoying tax-exempt status on their residential properties, a state Supreme Court ruling has cast a more stringent interpretation on state law

Consequently, discontent is mounting in Madison's nonprofit community and lawsuits are piling up Some nonprofit leaders charge that the city is arbitrarily picking and choosing which organizations it will allow to continue to operate without paying taxes on residential properties And that is breeding resentment

"There is a difference in being the leader of the charge, which the city clearly is, and maintaining the status quo," said Steven Schooler, the executive director of Porchlight, Inc "There is no reason they need to be leading the charge "

As nonprofit organizations grapple with how to pay the piper, expansion efforts have been stalled, new construction projects called off, and newly incurred costs passed along to unsuspecting tenants, many of whom are living on fixed incomes or low wages

Madison Mayor Dave Cieslewicz said he is well aware of the mounting frustration He and city staffers have twice met with nonprofit officials since August, most recently in mid-November, to discuss the situation Additionally, the city is working closely with state Rep Mark Gottlieb to rework numerous components of state law to rectify the situation, he said.

Until that happens, city officials claim they have no wiggle room when it comes to upholding the law.

"There is not a whole lot of room for interpretation. Our attorney is doing nothing but following the law," Cieslewicz said. "The friction here is not between the city and the nonprofit organizations. We are simply applying the law as it was handed down by the [state] Supreme Court. The friction here is between the nonprofit organizations and the state."

ROOT OF THE PROBLEM

Every even-numbered year, a nonprofit must file a report on its property, essentially reapplying for tax-exempt status. This is why some nonprofit organizations are receiving property tax bills sooner than others.

The overall shift in how the city of Madison is now reviewing such reports is rooted in a lawsuit that was settled roughly five years ago. In that case, the state Supreme Court ruled that a nonprofit must pay taxes on its residential property if its tenants could not apply for, and receive, tax-exempt status on their own.

That means leasing space to another nonprofit is okay. However, renting space to college students or low-income residents may no longer keep a nonprofit off a city's tax base.

"That ruling has generated a lot of anxiety in the nonprofit world," said Michael Kurth, Madison's chief assessor. "It wasn't a major issue before, but now we have legal precedence with the high court ruling strictly on the topic."

Kurth added that there are two other problematic provisions within the law.

First, the law dictates that the money collected from tenants can only be spent for maintenance costs or to pay off a building's construction costs. Money cannot be funneled into other programs or used for new construction projects.

Second, the law puts a 10-acre limit on the amount of property a nonprofit can own within a single municipality. That point led Future Madison to file suit against the city earlier this year.

"The main thing is, if the law doesn't change, there are going to be a heck of a lot more nonprofit organizations that we are going to have issues with," Kurth said.

"At some point, the city is going to own a lot of properties" — Doug Strub, Meridian Group Inc.

THE IMPACT

Meridian Group Inc. manages three separate properties for Future Madison. In all, the three affordable housing developments total 34 acres.

Doug Strub, who manages the properties through Meridian Group Inc., said the buildings were purchased, cleaned up, and rented out under the premise that if it provided a needed commodity for the city – affordable housing – it would not have to pay property taxes.

Earlier this year, Future Madison received a notice it will be taxed on some of its properties. Strub estimated the bills could amount to roughly $180,000. The city lumped the three properties together, giving them tax-exempt status on 10 of their more than 30 acres of property, as required by law. In the past, the city had granted each property a tax exemption.

"We have separate entities that it has treated as three separate entities for years," Strub said. "The city is picking and choosing how this law is applied."

Cieslewicz said the city is working to rework the "10-acre limit" section of the law with Future Madison properties in mind. Specifically, the city would like the law changed so that a nonprofit can receive tax exemptions on up to 30 acres of residential property.

The mayor added that the city also wants the language of the law expanded to broaden the permitted rent-use restrictions and to provide a more clearly defined definition of "low-income" tenants.

"We emphatically disagree with the state law," Cieslewicz said. "Which is why we are working to craft the solutions."

In the meantime, applications are piling up as the city waits to see if lawmakers can find time to address the issue by the end of the legislative session in May.

It doesn't appear such a solution will come from Gottlieb's office. Denise Solie, one of Gottlieb's legislative aids, said there is little chance the lawmaker will introduce a bill in the imminent future

"At some point, the city is going to own a lot of properties," Strub said "I think they were waiting to get bailed out (by the legislators), but that got nixed "

THE WAITING GAME

Two property reports in the city's "undecided" pile belong to Madison Development Corp

It's a roughly $50,0000 decision Madison Development Corp had been paying about $36,000 a year for the past 15 years on its 40-unit apartment within a tax incremental finance – or TIF – district on East Washington Avenue

Frank Staniszewski, the nonprofit's president, said he was bound by the TIF agreement to pay taxes on the property through 2006

On Dec 31, 2006, it also repaid a $320,000 note, which was loaned by the city to help finance the project

"Since we were no longer bound by the TIF agreement, we were able to file for tax exemption under the state statute," he said "Under the previous interpretation of the statute, we believed the property would qualify for exemption "

Madison Development Corp also applied for tax exemption on a recent four-unit, $800,000 addition it made on its West Mifflin Street lot

"We don't want to pay taxes on them, but we are very close to the end of the year, and we haven't heard anything yet," Staniszewski said "The city is just sitting on them We were told it was in a state of flux "

The indecision has stalled plans to add 12 more units to its East Washington property Staniszewski said the only way the nonprofit can absorb the tax bills would be by raising rents

It currently charges its tenants, most of whom are college students and low-income individuals and families, $100 to $200 a month less than the current market value on its units

Madison Development Corp owns roughly 200 housing units around the city and collects $1 5 million annually through rent Of that amount, more than half is spent on mortgage payments

SAFE GROUND?

Porchlight Inc owns and operates 240 housing units across Madison, providing shelter for 300 to 400 households a year Roughly 90% of those tenants earn $21,000 or less annually, which is 30% less than the median Dane County income, said Schooler, the nonprofit's executive director

"So far, the city has not challenged us However, this year we are somewhat concerned," Schooler said

"I think we are at a lower risk because we are more involved in case management, but the city could come in and and say, 'You are a landlord' Paying taxes on our properties would be a budget buster for us."

Schooler fears that if the law isn't changed, many low-income housing developments will disappear, forcing more needy people into shelters or to life on the streets The trend runs counter to every city discussion about the pressing need for affordable or emergency housing "This situation turns our mission of reducing homelessness on its head," he said ■