

Hillscomb Associates

v.

Town of Hillsborough

Docket Nos. 3468-86, 3865-87 and 4553-88

DECISION

These three appeals, having been consolidated for hearing, were heard, as scheduled, on July 14, 1989. The Taxpayer was represented by Frederick L. Sewall, Appraiser, Marvin F. Poer & Company and Robert O. McNamara, Appraiser, Marvin F. Poer & Company. The Town was represented by Peter A. Chamberlin, Administrative Assistant and Harland A. Noyes, Appraiser.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$838,950 (land, \$75,300; buildings, \$763,650) placed on their real estate located off West Main Street for the 1986, 1987 and 1988 tax years. The property consists of 24 apartments in six clusters of residential buildings and other improvements sited on three acres, more or less, on a dead end street known as Woodlawn Avenue.

The parties agreed the assessment-sales ratio for the Town of Hillsborough for 1986 was 76%, for 1987 was 53% and for 1988 was 49%.

The Taxpayers argued the subject property was a 24 unit subsidized residential rural project under a Farmers Home Administration 515 program. The appraiser stated that particular financing program regulated the return the investor owners might achieve and also regulated the liquidity of the subject property. The appraiser continued by stating the Taxpayers had a 20 year obligation and a contractual moratorium on conversion of the property to any other purpose.

The appraiser for the Taxpayer testified the restrictions run with the property which would encumber any other owner in the same fashion as the Taxpayer. The appraiser stated the Taxpayer had a 1% mortgage with a 50 year

term, which could be prepaid after 20 from years construction and after

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completion of an impact statement. The appraiser indicated there were 15 years remaining before any prepayment of the mortgage could be considered. The appraiser stated the rental rates for the subject property were derived by the operating requirements of the budget.

The Town stated the subject property was assessed the same as all other properties in the Town. The Town representatives stated the cost approach was used to determine the value of the subject property and stated the Marshall Swift 1984 Manual was the basis for their determinations.

The Town representatives concurred that the highest and best use of the subject property was as subsidized housing, but stated their position was that there was a question of the developer owner obtaining tax credits and other benefits, which should be reflected in the assessed value.

The Taxpayers' appraisers questioned whether any residential income properties were selling for \$35,000 a unit in 1984. The appraisers went on to state the subject property had been a successful project, which pays a return to the owner and requested application of the assessment-sales ratio to the market value of the subject property. The Taxpayer's appraisers noted resistance from Town officials on their attempts to discuss the assessment on the subject property.

The appraisers for the Taxpayer concluded by recommending that the Board follow their recommendation as outlined in their value/assessment analysis (Taxpayers Exhibit 1).

The Board finds the appraisers for the Taxpayer presented data based on three fiscal years, which represents actual operating income and expenses. The Board also finds the Taxpayer's appraisers presented a pro forma schedule and an indicated fair market value using the income approach, with a range of value of \$995,000 in 1986 to \$1,210,000 in 1988.

The Board finds the Town assessed the subject property, according to the 1985 commercial and industrial property assessment record card copy in the Board's files, for a value which represented a market value of approximately \$40,000 a unit for the subject property.

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The Board finds the Town's use of the 1984 cost manual was an appropriate method to use for a newly constructed property. The Board notes, however, the assessing officials did not apply any factor for the impact of government regulation of the subject property. The Board finds that while owning and managing property with government restriction, owners also enjoy other benefits accruing to owners of this specific type of property. The Board finds, on balance, both approaches to determination of value are appropriate. The Board finds the indicated value at the time of the 1985 assessment results in a proper assessment basis for the subject property of \$718,100. The Board finds the subject property currently enjoys favorable financing coupled with its government restriction which as each year passes is nearing the time when it might be placed into the market unfettered with encumbrances and might command a free market price.

The Board therefore rules the proper assessment for the 1986, 1987 and 1988 tax years is \$718,100.

If the taxes have been paid, the amounts paid on the value in excess of \$718,100 for the respective years is to be refunded with interest at six percent per annum from the respective dates of payment to the dates of refunds.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Esq., Chairman

George Twigg, III, Member

Peter J. Donahue, Member

(Mr. Franklin did not sit.)

Paul B. Franklin, Member

Date: April 27, 1990

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I certify that copies of the within Decision have this date been mailed, postage prepaid, to Donald M. Munro, Agent for Hillscomb Associates, taxpayer; and the Chairman, Selectmen of Hillsborough.

Michele E. LeBrun, Clerk

Date: April 27, 1990

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