

Claremont Manor Apartments Ltd.

v.

City of Claremont

Docket Nos. 3835-87 and 5123-88

DECISION

These two appeals, having been consolidated for hearing, were heard, as scheduled on September 5, 1989. The Taxpayer was represented by Frederick L. Sewall and John M. O'Connor, Appraisers/Agents of Marvin F. Poer & Company. The City was represented by George B. Ballester, Assessor.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$1,100,000 (land, \$64,400; buildings, \$1,035,600) placed on the real estate, located on Maple Ave. (Map 30, Lot 41) for both the 1987 and 1988 tax years. The property consists of 90 units of subsidized affordable rental housing on 4.69 acres of land. The Taxpayer owned, but did not appeal, a second land only parcel valued at \$100.

The parties agreed that the equalization ratios for the City of Claremont for the 1987 and 1988 tax years were 37% and 28% respectively.

Mr. Sewall described the property as "three-story wood framed brick veneer garden apartment buildings containing 13 one-bedrooms, 32 two-bedrooms and 45 three bedrooms" all built in 1973.

Mr. Sewall argued:

"The obligations placed upon the ownership and operation of properties funded through this HUD Section 236 program, including approval of budgets and cash flows, equity distributions, maximum rental charges, tenant qualification requirements, prepayment and conversion options, are considered legal restrictions that must be acknowledged in the appraiser's highest and best use determination.

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The Claremont Manor Apartments are considered encumbered by these regulations and obligations related to the HUD funding for such a lengthy period so as to represent an essentially permanent legal restriction. These restrictions are regarded as fully enforceable for the foreseeable future and as having the same permanence of impact on the property use as any other legal restriction such as zoning, deed covenant, or easement." "Taxpayers exhibit #2"

He concluded "that the highest and best use of the Claremont Manor Apartments is for continued use, as operated and obligated under HUD Case No. 024-44035, as affordable rental housing."

Mr. Sewall testified that the income approach to value was the most reliable in this case due to the income producing nature of the property as regulated by HUD's approval of maximum rental charges and tenant income requirements.

Mr. Sewall noted that the HUD contract is for a 20 year period concluding in 1994. At this time the owners could pay off the mortgage and remove the property from HUD regulations. However, recent federal regulations require an impact study to be conducted if the property is to be removed from the HUD program to see if the tenants would be adversely affected. Mr. Sewall argued that this resulted in a de facto ban on conversion of the projects.

Mr. Sewall submitted an appraisal estimating, solely by the income approach, market values (and assessed values) of \$1,866,000 (\$690,000) and \$2,773,000 (\$776,000) for the 1987 and 1988 tax years respectively.

Mr. Ballester submitted a separate appraisal in which he relied on the cost approach indicating a market value of \$3,117,500. He argued that the operating expenses of Claremont Manor appeared high compared to general expense and income data for other subsidized projects.

Upon questioning, Mr. Ballester did agree that the HUD regulations do have some negative affect on the market value of the project.

In regard to the Taxpayer's allegation the Board rules as follows.

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

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And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state, and upon all estates within the same

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board finds that the property is obligated to the U.S. Department of Housing and Urban Development (HUD) Section 236 regulations as stated by the Taxpayer.

The main issue before the Board then is: are these government restrictions of the use, income, and management of the property the controlling factor in determining both the method and amount of the proper valuation.

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The Board rules that all factors affecting a property and all methods of valuation should be considered and weighed in determining the correct valuation.

"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).

While not unmindful of the dissent in *Royal Gardens Co. v. Concord*, 114 N.H., 668 (1974), the Board rules that the N.H. Supreme Court has held in *Steele v. Town of Allenstown*, 124 N.H., 487 (1984) that . . . "to 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, see *Royal Gardens Company v. City of Concord*, 114 N.H. 668,671-72, 328 A.2d 123, 124-25 (1974), and the rule that "in 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). However, the Board also finds that the court has specifically not limited assessors in appraising subsidized property from considering all relevant factors other than government regulations.

The Board finds that this property, as with other subsidized property, can accrue benefits to the owners other than its income potential:

- while the testimony was not conclusive on this subject, this property has the potential in 1994 to be removed from the government regulations and be operated in a more free market manner. The relatively recent federal regulation requiring an impact study may have a chilling effect on such conversion, but the Board finds that this is one option available to the property which distinguishes them from regulated utilities as they were compared to in *Royal Gardens v. Concord*, 114 N.H. 668 (1974).

- the management of subsidized properties can offer cash flow

and economy of scale benefits to the owners

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especially if the owners and managers are one and the same.

-especially true prior to the Federal Income Tax revisions in 1986, but to a lesser extent true in 1987 and 1988, some income tax advantages can accrue to the owners of these projects.

-the long term income from these types of subsidized projects does provide a relatively low risk and well defined return.

The Board finds that the above listed benefits are conceivably available to any potential owner and thus are germane in estimating value. Again in Steele v. Town of Allenstown, 124 N.H., 487 (1984) . . . we agree that the value of property for taxation purposes is not determined by the value to the owner, Trustees &c. Academy v. Exeter, 92 N.H. 473, 485-87, 33 A.2d 665, 673-74 (1943), but, "if the property is available to others for use which he has made of it, such transmissible use is of material bearing in estimating value." Id. at 486.33 A.2d at 673.

Ideally, the market approach to value would be the best method to use in appraising subsidized properties as it properly measures the economic obsolescence of government regulations and any benefits that ownership of the property would provide. As the testimony of both the Taxpayer and Town supports the fact that few, if any, of these subsidized properties sell, this method of valuation is not available. The cost approach, unless adjusted for the economic obsolescence of government restrictions (which is difficult to measure) is not entirely reliable. The Board rules that the income approach to value is then the best method available as long as the expense figures used in arriving at net income reflect reasonable management and market costs of the area. While lacking actual market data to quantify, the Board rules that the resulting market value from the income method must be adjusted to reflect the value of the non-income producing attributes of the property earlier enumerated.

In the case at bar, the Board finds that the 1987 income reflects the better rent collection record of the new management company and is the best

year

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on which to base the income calculation. The Board finds that based on testimony and review of the exhibits the correct operating expense per unit to be \$3,400. Even though the Taxpayer's stabilized expense per unit of \$3,500 was lower than actual expenses and recognized mismanagement and deferred maintenance, the Board finds that there was evidence that the property could still have been managed more efficiently.

The Board finds using effective gross income of \$467,504, total operating expenses of \$306,000 (90 units x \$3,400) and an overall capitalization rate of .055 results in a market value estimate of \$2,936,450. Further the Board finds that the non-income producing benefits of the property earlier enumerated enhance the value arrived at through the income method by 10%. Thus the Board finds the market value as of April 1, 1988 to be \$3,230,100 (\$2,936,450 x 1.10).

As the Board has found that the 1987 income reflects the best data for calculating the income approach to value, the Board finds it is reasonable to apply the market value found for 1988 to both years of appeal. The Board finds that the 1988 equalization ratio as established by the Department of Revenue Administration is 28%.

Thus the Board rules that the proper assessment for the 1987 and 1988 years is \$904,450 (\$3,230,100 x .28).

If the taxes have been paid, the amount paid on the value in excess of \$904,450 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

— Anne S. Richmond, Esquire, Chairman

— George Twigg, III, Member

— (Mr. Donahue did not sit.)
Peter J. Donahue, Member

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—
Paul B. Franklin, Member

Date: September 20, 1989

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Frederick W. Sewall, representative for Claremont Manor Apartments Ltd., taxpayer; and the Chairman, Board of Assessors of Claremont.

—
Michele E. LeBrun, Clerk

Date: September 20, 1989

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MOTION FOR RECONSIDERATION

The Board received a letter on October 3, 1989, from the City of Claremont requesting a review or reconsideration of the decision in the above captioned cases.

The letter questions:

- 1) The use of the 1988 equalization ratio to adjust a value derived by the income approach using 1987 income and expense figures.
- 2) Why the 1988 income figures were not used as they were higher than the 1987 figures.
- 3) Whether the Marvin Poer appraisal used the actual rents in 1987 as they purportedly increased in August of 1987.

On October 23, 1989, the Board received a letter from Frederick L. Sewall, Northeast Area Manager for Marvin F. Poer & Company on behalf of the Taxpayer questioning "the validity of the letter as an appropriate objection, or request for re-hearing.

For the purpose of equity, the Board rules it is appropriate for the Board to entertain motions for rehearing, reconsideration or clarification from either party as a result of a decision.

Therefore the Board amends its decision of September 20, 1989, and finds as follows.

The 1987 equalization ratio of 37% was determined by the Department of

Revenue Administration analyzing sales from October 1, 1986 to September 30, 1987. Similarly the 1988 ratio of 28% was derived from sales from October 1,

1987 to September 30, 1988. The income and expense figures used in the income approach to value are from January 1st to December 31st financial statements. Since the ratio study period more closely corresponds with the same year financial statement period, the 1987 income value estimate should be equalized using the 1987 ratio of 37%.

Based on the 1988 financial statements included in the City's appraisal (exhibit TN-A), the potential gross income is \$504,081. However, after reducing it for actual vacancy and bad debt figures for 1988 (\$35,170) the resulting effective gross income of \$468,911 is very similar to the 1987 effective gross income of \$467,504. As there was no specific testimony as to the quality of management in 1988, the Board reaffirms its finding "that the 1987 income reflects the better rent collection record of the new management company and is the best year on which to base the income calculation."

The Board finds that while the Marvin Poer appraisal lists a rent schedule in effect on April 1 of each year, the income figures used are for actual rents collected during the fiscal year reflecting any rent increases subsequent to April 1st.

For the above stated reasons, the Board finds using an 1987 effective gross income of \$467,504, total operating expenses of \$306,000 (90 units x \$3,400) and an overall capitalization rate for 1987 of .058 results in a market value estimate of \$2,784,552. Further, the Board finds that the non-income producing benefits of the property earlier enumerated enhance the value arrived at through the income method by 10%. Thus, the Board finds an indication of market value as of April 1, 1987 to be \$3,063,007.

As the Board has found that the 1987 income reflects the best evidence available for calculating the income approach to value, the Board finds it is reasonable to apply the market value found for 1987 to both years of appeal.

Thus the Board rules that since the assessment indicated by the income valuation method for 1987 ($\$3,063,007 \times .37 = \$1,133,312$) is similar to the City's assessment of \$1,100,000 for both 1987 and 1988, the Taxpayer has failed to prove that the assessment is unfair, improper, or inequitable or that it

represents a tax in excess of the Taxpayer's just share of the common tax burden. The ruling is therefore: motion for reconsideration granted and request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Esq., Chairman

George Twigg, III, Member

Peter J. Donahue, Member

Paul B. Franklin, Member

Date:

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Frederick L. Sewall, representative for Claremont Manor Apartements, Ltd., taxpayer; and the Chairman, Board of Assessors of Claremont.

Michele E. LeBrun, Clerk

Date:

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