

Autumn Leaf Village Assoc. Inc.

v.

City of Keene

Docket Nos. 3888-87 and 4979-88

DECISION

These two appeals, having been consolidated for hearing were heard, as scheduled, on October 18, 1989. The Taxpayer was represented by John O'Connor, appraiser for Marvin F. Poer & Company. The City was represented by Lawrence Shaffer, Assessor and Laura Thibodeau, Appraiser.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$2,191,900 (land, \$159,500; buildings, \$2,032,400) placed on the real estate, located at Ivy Drive for the 1987 and 1988 tax years. The property is identified as Map 53, Sec. 1, Parcel 19 and consists of 56 housing units on 3.2 acres.

Neither party challenged the Department of Revenue Administration's equalization ratios of 87% and 94% for the 1987 and 1988 tax years, respectively for the City of Keene. Based on those ratios, the Taxpayer's assessments equate to market values of \$2,519,425 and \$2,331,808 for 1987 and 1988 respectively.

The Taxpayer testified that this property was developed in 1982 under section 8 regulatory funding program of the U.S. Department of Housing and Urban Development to provide low income housing. The Taxpayer argued that the obligations placed upon the operation of the property by the HUD regulations have an effect on the properties highest and best use and its value.

The Taxpayer argued that the highest and best use was for affordable rental housing as obligated by HUD and 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.

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The Taxpayer noted that the HUD obligations were for 30 years concluding in 2012. At that time the owners could pay off or refinance the mortgage and remove the property from HUD regulations. However, the Taxpayer argued that recent federal regulations requiring an impact study to determine if the tenants would be adversely affected resulted in a de facto ban on conversion of these type of projects.

Using 1986 calendar year income and expense figures, the Taxpayer argued the 1987 market value as indicated by the income approach was \$1,813,000. Similarly using the 1987 calendar year income and expense figures, the Taxpayer argued the 1988 market value as indicated by the income approach was \$1,838,000.

The City testified that it stratified all properties in the city into 53 categories in 1987 and 1988 and that based on sales within each category, values were adjusted periodically to bring assessments more in line with market value. In 1986, the City stated there were two sales of multi-unit residential complexes in Keene which indicated a market value of approximately \$41,000 per unit. The City argued that the sales were of complexes that were older, generated less gross income and had higher vacancy rates. The Town argued that the equalized values per unit of \$44,990 and \$41,640 for tax years 1987 and 1988 respectively were therefore reasonable.

The City stated that it felt any negative affect on market value that the HUD regulations may have was offset by the guaranteed income provisions of the HUD regulations.

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:

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:

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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 8 regulations as stated by the Taxpayer.

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

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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 2012 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). Thus it is possible for these properties to enjoy some market appreciation.

-the management of subsidized properties can offer cash flow and economy of scale benefits to the owners 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.

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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.

The Board has been presented with two approaches to value with different conclusions. The Board rules that in the case at bar both the capitalization of the income of the regulated property and the recent sales of similar, albeit unregulated, properties both include valid aspects in the determination of the market value of the Taxpayers property. The Board therefore gives them equal weight in their decision.

To correctly calculate the market value, via the income approach, the financial statements of 1987 and 1988 are more appropriate to use as they more closely correspond to the time period used by the Department of Revenue Administration to determine the equalization ratios for those years. Therefore, the Board finds the following calculations are correct as to the income capitalization approach:

	<u>1988</u>	<u>1987</u>
Gross Income:	\$405,463	\$378,085
Total Expenses:	\$115,115	\$109,693
Net Income:	\$290,348	\$268,392
Overall Capitalization Rate:	.144	.145
Indicated Income Value Estimate:	\$2,016,306	\$1,850,979
Per unit (56 units):	\$ 36,005	\$ 33,050

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The Board further finds that the City's equalized market value estimates per unit were \$41,640 and \$44,990 for tax years 1988 and 1987 respectively based on recent sales of unregulated apartment complexes.

The Board finds that the City stratifies its properties into 53 categories and periodically (but not necessarily each year) indexes and adjusts some but not all of the categories based on recent sales with the goal of achieving assessments at 95% of market value.

For the above stated reasons, the Board rules that by giving equal weight to the income and market approaches and averaging their indications of values results in a market value of \$39,000 (rounded) per unit for both 1987 and 1988.

The Board rules that the correct equalization ratios for 1987 and 1988 respectively are 87% and 94%.

Therefore, the Board rules the correct assessment for 1987 is \$1,900,100 (\$39,000 x 56 units x .87) and for 1988 is \$2,052,950 (\$39,000 x 56 units x .94).

If the taxes have been paid, the amounts paid on the value in excess of \$1,900,100 for the 1987 tax year and \$2,052,950 for the 1988 tax year are 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, Esq., Chairman

(Mr. Twigg did not sit.)
George Twigg, III, Member

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: November 29, 1989

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I certify that copies of the within Decision have this date been mailed, postage prepaid, to Frederick L. Sewall, Agent for Autumn Leaf Village Associates, taxpayer; and the Chairman, Board of Assessors of Keene.

Michele E. LeBrun, Clerk

Date: November 29, 1989

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