

Colonial West Associates

v.

City of Keene

Docket Nos. 3889-87 and 4779-88

DECISION

A hearing in this appeal was held, as scheduled, on October 18, 1989. The Taxpayer was represented by John M. O'Conner of Marvin F. Poer Co. The City was represented by Laurence Shaffer, City Assessor, Laura Thibedeau, City Appraiser, and Fred Murray, Member, Board of Assessors.

The Taxpayer appeals, pursuant to RSA 76:16-a, the following assessments for the 1987 and 1988 tax years:

M501-1-7	Village Drive (1987)	Village Drive (1988)
	land only     \$3,400	land only     \$4,100

M501-1-6 Colonial Village (1987 and 1988)

land	\$ 171,000
buildings	<u>1,385,300</u>
total	\$1,556,300

M132-1-1 Colonial Westwood (1987 and 1988)

land	\$ 356,300
buildings	<u>2,756,500</u>
total	\$3,112,800

Map 501-1-7 is .64 acre of land. Map 501-1-6 is 36 units of a 98-unit apartment complex on 4.61 acres of land. Map 132-1-1 is a 72-unit

complex on 12 acres of land.

The parties agreed that the equalization ratio for the City of Keene for the 1987 tax year was 87 percent and for the 1988 tax year was 94 percent.

The Taxpayer argued it was overassessed based on an appraisal report prepared by Mr. O'Conner. The report relied solely on the income approach to value. Indicated per-unit market values for both Colonial Village and Colonial Westwood were \$32,006 for 1987 and \$35,665 for 1988. Based on these market values the Taxpayer argued the proper assessments were as follows:

	1987	1988
Colonial Village	\$1,002,424	\$1,206,894
Colonial Westwood	2,004,848	2,413,787

The Town's position was its \$43,000 per-unit assessed value was in line with two 1986 sales in the City and the sale of the subject property for over \$50,000 per unit in February of 1989. The City stated apartments were selling in the range of \$40,000 to \$55,000 in the southern half of New Hampshire.

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:

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.  
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"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).

Since the equalization ratios are not in dispute the Taxpayer needs to establish that the market values of the combined properties were less than \$5,370,689 on April 1, 1987 and less than \$4,971,489 on April 1, 1988.

The Board finds as follows. Of 170 apartment units , 108 were in Keene; the remainder were in Swanzey. The equalized per-unit value was \$49,730 for 1987 and \$46,030 for 1988. Brookside, a 48-unit apartment complex, sold for \$41,040 per unit in December of 1986. Court and Baker, two-apartment complexes with a total of 80 units, sold for \$41,250 per unit in September of 1986. The subject sold for \$8,600,000 or \$50,590 per unit in February of 1989. Of the three sales, two were highly leveraged indicating creative financial arrangements are not unusual in sales of this type. None of the sales figures support per-unit market values of \$32,000 and \$35,665 for

tax reform act. Adjusting the subject property to pre-1986-tax-reform-act values results in a market value of \$65,000 per unit, a figure not supported by any sales anywhere. The difference in values of the subject property using the income approach and the sale of the subject (\$35,665 vs. \$50,590) points out the weakness of the income approach to value based on current income: it does not factor in the present worth of future benefits such as appreciation and greater future income.

In conclusion, the Board is not convinced that the per-unit value of the subject property was less than \$49,730 or \$46,030 on April 1, 1987, or April 1, 1988.

The Board therefore rules 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:

Request for abatement denied.

SO ORDERED.

November 29, 1989

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

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

Peter J. Donahue

Paul B. Franklin

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I certify that copies of the within Decision have been mailed this date, postage prepaid, to Frederick L. Sewall, the Taxpayer's agent, and to the Chairman, Board of Assessors, City of Keene.

Date: November 29, 1989

Michele E. LeBrun, Clerk

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