

The Pines Realty Trust/G. R. Realty Trust
v.
City of Manchester

Docket Nos. 4255-88 and 7003-89

DECISION

These two appeals, having been consolidated for hearing, were heard as scheduled on August 24, 1990. The Taxpayers were represented by Gary M. Stern, Agent. The City was represented by Paul W. Porter, Jr., and William Lynch.

The Taxpayers appeal pursuant to RA 76:16-a.

In 1988 the property under appeal was assessed to two trusts: G. R. Realty Trust (21 units with a total assessment of \$263,840) and The Pines Realty Trust (110 units with a total assessment of \$1,174,160).

In 1989 the property under appeal was assessed to three trusts: G. R. Realty Trust and The Pines Realty Trust, the same as in 1988, and five additional units with a total assessment of \$50,860 assessed to C W Realty Trust.

The Board rules that while legally there were two distinct owners in 1988 and three in 1989, the appeals and issues can be consolidated before this Board for judicial economy as the trustees of the trusts are the same and the property is very similar.

The property consisted of a total of 131 garden-style leased condominium units in 1988 and 136 units in 1989, located on Bodwell Road.

Neither party challenged the Department of Revenue Administration's equalization ratio of 17 percent for 1988 and 18 percent for 1989 for the City of Manchester. Based on those ratios the Taxpayers' assessment equates to a combined market value of \$8,458,823 in 1988 and \$8,271,444 in 1989.

Mr. Stern submitted income and expense analyses that indicated a market value of \$3,922,000 in 1988 and \$3,260,000 in 1989. He argued that the income approach is more applicable than the market or cost approaches as "the property is and always has been a rental property." Mr. Stern argued that based on the income approach to value the assessment for both years should be approximately \$700,000.

Upon questioning, Mr. Widett and Mr. Simons, Trustees, stated they had purchased 325 units in several transactions in 1986 and had proceeded to convert and sell the units as condominiums in 1986 and 1987. They had purchased the property at several prices per unit (\$40,000, \$44,500, and \$46,500), with the total purchase price attributable to those under appeal for 1988 being \$5,909,000 and for 1989 being \$6,109,000. By 1988, when the market for condominiums had diminished, they testified that 189 units had been sold during the previous two-year time period with prices ranging from \$42,000 to \$72,000.

Mr. Porter testified that the units were converted to condominiums in 1986 and were assessed first as such in 1987. The City submitted an analysis of sales of the condominiums and argued,

the assessed values for these units were developed from market value of the sold units within the condominium and fall within the range of the legal and actual ratios for the tax year 1988.

. . . The market approach was used to establish value as replacement cost and income approaches were, in our opinion, not applicable as condominium units typically were purchased by owner-occupants. The income approach or replacement cost approach were not used for any condominiums in the city of Manchester.

It is the board's opinion that these units were assessed legally and proportionately as indicated by the subsequent market values and that since the ratio had not changed from 1987 to 1988, the original assessed values are valid and at an acceptable level of assessment. (Exhibit Tn-A)

The Board rules as follows.

The Taxpayers' 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 RA 75:1 (supp) which states:

Except with respect to open space land appraised pursuant to RA 79-A:5, and residences appraised pursuant to RA 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 main issue before the Board is: As the highest and best use of a property and thus its respective value fluctuates due to changes in the market, what adjustments in the property's assessed value is appropriate to maintain relative equity within the tax base?

The answer to this question varies depending on the magnitude and duration of the fluctuations and the sophistication of the assessing system in place. There is never one exact, precise, or perfect assessment but rather a range of values that represent a reasonable measure of one's tax burden.

The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, does justice require an abatement? . . . The justice to be administered is to be sufficiently exact for the practical purposes of the legislature, who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. They cannot be fixed by an invariable rule. Manchester Mills v. Manchester, 58 N.H. 38, 39.

In 1986 and 1987 the Taxpayers capitalized on the market demand for condominiums and purchased, converted, and sold over half the units while a market existed for this type of ownership. Obviously the highest and best use during those years was as residential condominiums. In 1988 and 1989 the record is replete with evidence that the condominium market was busted and the

owners were forced to carry the remaining units as rental units.

Assessments do not normally track the market as closely as the value of shares do the stock market. One could argue that the ideal would be for each municipality to have the capability to track sales and frequently adjust assessments rather than having periodic revaluations. However, few municipalities in New Hampshire presently have this ability.

And so to determine equity of one property, the assessing practices of the entire tax base must also be taken into consideration. Manchester has not had a city-wide reassessment for 20 years. The record is clear that the assessments of properties that have had no physical or legal change have remained the same. Properties that have been improved or had a change in form of ownership have been reappraised proportionally using in most cases a combination of the market and cost approaches. Given this long-term nature of the assessing practices, the Board rules it is more reasonable to assess the units under appeal in that context as opposed to assessing them at their short-term highest value as condominiums as the market indicated in 1986 and 1987 and as the City has assessed them for 1988 and 1989 and as opposed, as the Taxpayers propose, to value them solely as indicated by the income approach which is effected in the short term by the flat rental rates and high vacancy. Neither of these two "snapshots" in time truly reflect the property's long-term value for determining tax equity in a tax base that is not also frequently adjusted to the ebb and flow of the market.

Therefore the Board finds that the best evidence before it in determining an equitable assessment for this property is the 1986 purchase prices attributable to these units plus an additional \$1000 per unit to

account for the present worth of the possible future benefit of having the ability to market the units as condominiums. The Board finds that this coincides with the Board's investigator's estimate of the total market value in 1988 and 1989 being in the 6-million-dollar vicinity.

The Board finds that the purchases were as follows:

G. R. Realty Trust - 21 units at \$40,000 each	=	\$840,000
The Pines Realty Trust - 23 units at \$44,500 each	=	\$1,023,500
The Pines Realty Trust - 87 units at \$46,500 each	=	\$4,045,500
C W Realty Trust - 5 units at \$40,000 each	=	\$200,000

The Board finds the equalization ratios for 1987, 1988, and 1989 were 17 percent, 17 percent, and 18 percent respectively. The Board rules that since the purchases of the units to be equalized occurred in 1986 and since there is relatively little difference between the 1988 and 1989 ratios, it is reasonable and practical to use the factor of 17 percent to equalize the market values for both years.

Therefore the Board rules the proper assessments are calculated as follows:

1988

G. R. Realty Trust (\$840,000 + \$21,000) x .17	=	\$146,370
The Pines Realty Trust (\$5,069,000 + \$110,000) x .17	=	\$880,430

1989

G. R. Realty Trust (\$840,000 + \$21,000) x .17	=	\$146,370
The Pines Realty Trust (\$5,069,000 + \$110,000) x .17	=	\$880,430
C W Realty Trust (\$200,000 + \$5,000) x .17	=	\$34,850

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

September 12, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Gary M. Stern, representing the Taxpayers, and to the Chairman, Board of Assessors, City of Manchester.

September 12, 1990

Michele E. LeBrun, Clerk

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ORDER RE MOTION FOR CLARIFICATION

The Board of Tax and Land Appeals received on December 6, 1990, a request for clarification from Mr. Sterns, tax consultant for the Taxpayers. While his request for clarification is not specific, it is apparent from the supporting correspondence that the City wishes to apply toward the unpaid 1989 taxes of the Pines Realty Trust the abatements due based on the Board's decision of the G. R. Realty Trust and the C. W. Realty Trust, whose taxes were paid for 1989.

The Board's Decision of September 12, 1990, is very clear as to the distinct legal nature of these trusts. On Page 1 the Board found that in 1989 there were three distinct owners of property and that for hearing purposes only the appeals were consolidated.

Further, on Pages 6 and 7 of the decision the Board itemized three separate correct assessments for 1989 and ordered that the taxes paid by each

owner in excess of the correct assessments be refunded to each owner with interest.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Order have been mailed this date, postage prepaid, to Gary M. Stern, representing the Taxpayers, and to the Chairman, Board of Assessors, City of Manchester.

Michele E. LeBrun, Clerk