

**Pine Hill Gardens Associates**

**v.**

**City of Nashua**

**Docket Nos.: 6278-89 and 8151-90**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1989 and 1990 assessments of \$3,822,900 (land, \$364,800; buildings, \$3,458,100) and \$3,832,300 (land, \$364,800; buildings, \$3,467,500) respectively on Pine Hill Gardens Apartments located at Cypress and Flagstone Drive consisting of a total of 188 rental units in 16 buildings (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) the 1989 assessment when equalized at 43 percent indicates a value of \$8,890,465;
- (2) the Taxpayer estimated the Property's market value by the income approach

to be \$5,805,000 in 1989 and \$4,981,675 in 1990.

(3) the Property has been assessed as a B+ grade (brick on concrete construction) when it is in fact a brick on wood frame construction and comparable properties in the City were all assessed at C to C+ grades in the same RC zone;

(4) Royal Crest Apartments which is brick on concrete construction is the only other apartment complex in the City assessed as a B+ grade.

(5) the land is assessed at \$45,000 per acre versus \$30,000 per acre for the comparables;

(6) the Property is assessed for 16 identical buildings plus 1 smaller building when in fact there is only a total of 16 buildings (15 identical and 1 smaller);

(7) several of the City's comparables have either been foreclosed on or have been revalued for approximately one-half the original purchase price; and

(8) the revised assessment of \$5,110,300 for the 1992 tax year verifies that the property values were on a downward trend.

The City conceded that, in error, an additional building had been calculated into the assessment and recommended reducing the assessments by \$205,600 for each year.

The City argued the revised assessments were proper because:

(1) two different but similar cost manuals were employed by the City in appraising apartment complexes;

(2) ten sales of comparable property in 1985 to 1989 indicate an estimate of market value for the Property by both the direct sales comparison approach and the income approach of \$9,600,000 for 1989 and \$8,450,000 for 1990; and

(3) the Taxpayer failed to show that its Property was assessed at a higher

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percentage of market value than the percentage at which property is generally assessed in Nashua.

#### Board's Findings & Rulings

The board is faced with two general issues as argued by the parties:

(I) what were the proper estimates of market value for the Property for the two years under appeal; and

(II) what ratio(s) should be applied to the estimates of market value to arrive at the proper assessments.

#### (I) Estimate of Market Value

The board finds, based upon the evidence submitted by both parties and the income producing nature of the Property, the income approach to value provides the best estimate of value for the two years before the board.

Analysis of the party's evidence on the income approach can be broken down into three general areas: a) effective gross income (EGI), b) typical and proper operating expenses, and c) capitalization rate.

##### **a) Effective Gross Income**

The Taxpayer relied upon actual income for the Property (which by its very nature includes rental income and any miscellaneous income reflecting actual vacancy and collection losses). The Taxpayer's EGIs for 1989 and 1990 were \$1,083,976 and \$1,014,932.

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The City estimated the Property's EGI by reviewing market rents and vacancy rates for comparable property in the city. For 1989 the City determined an EGI of \$1,224,900 from an estimated potential gross income of \$1,361,000 and a vacancy rate of ten percent. For 1990 the City determined an EGI of \$1,156,155 from an estimated potential gross income of \$1,360,183 and a vacancy rate of fifteen percent.

In these cases, the actual effective income is slightly lower than the City's estimated EGI (indicating either the property and/or management was inferior than the City's comparables thereby resulting in a higher vacancy rate). The board relies on the City's EGI as the best evidence since it is based upon general rental market data reflective of market rents and vacancies.

**b) Operating Expenses**

The Taxpayer again relied upon actual expenses in its analysis. For 1989 the expenses were \$407,591 or 37.6 percent of the EGI and in 1990 the expenses were \$426,098 or 42.0 percent of the EGI. The Taxpayer testified that the expenses were exclusive of property taxes.

The City derived its 35 percent of EGI estimate for expenses ( i.e. expense ratio) from the analysis of ten sales of comparable properties in the state. The differences between each sale's EGI and net operating incomes were compared to their respective EGIs and then correlated to the 35 percent

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estimate. The City testified that the ten sales' income data included property taxes as an expense and thus the 35 percent estimate for the subject property was inclusive of taxes.

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The board rejects a strict adoption of either party's figures as it finds some shortcomings in both.

The greatest shortcomings lie with the City's analysis. The board finds the City's estimate of expenses and determination of an overall capitalization rate (OAR) are inextricably tied to the City's ten comparable sales. Thus the following findings apply to both the expense and cap rate calculations by the City.

While in theory it is possible to derive an estimate of expenses (and an OAR) from sales data, in practice the City's methodology is flawed for several reasons:

- A) the sales data was received mostly from third parties and not verified;
- B) the City made no adjustments to the sales for their differing locations and differing tax rates; and
- C) the City did not stratify or adjust the sales for differing factors such as risk, land to improvement ratios, remaining economic life, and date and terms of sales (See Property Appraisal and Assessment Administration, International Association of Assessing Officers, 270 (1990)), and more specifically at page 272,

"Capitalization rates change over time, especially with changing

interest rates and changing supply and demand

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conditions. An overall rate of return can quickly become obsolete. Consequently, appraisers monitor capitalization rates in times of changing market conditions so that as of the date of appraisal the correct rate will be used. This can be done by adjusting available sales for sale date and terms of sale if sales close to the appraisal date are not available." (emphasis added)

The City did none of this. The sales used by the City occurred mostly in 1986 and 1987 and yet the City made no adjustment for time and market changes between then and the tax years under consideration. The market perceptions and decisions being made by investors of multi-unit rental property in 1986 and 1987 were quite different than those in 1989 and 1990. In the earlier time frame, the purchasers were looking largely at speculative short term resale potential of such property either as a whole or as separate condominium units. In 1989-90, however, the roller coaster ride of the market for this property was just past its apex and dropping with increasing vacancy rates, financing uncertainties and an oversupply of rental units. Thus, the two time periods are not comparable without significant adjustments.

The City did not adjust for the terms of the sales; eight of the ten sales had prices that were either influenced by highly leveraged resales of

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the property with seller second mortgages with deferred interest for several years or by the anticipation of condominium conversion. These type of terms had all but evaporated by 1989 and 1990.

The Taxpayer's sole reliance on actual expenses without any review of market norms is not sound practice in estimating value by the income approach.

Investors looking to purchase property such as this would look beyond the actual expense history and review industry trends and local market data.

Similarly, such an analysis should be done when determining market value.

Therefore, in reviewing all the evidence before it and relying on its collective knowledge and experience with properties such as this, the board finds that an estimate of expenses of 35 percent of the EGI, exclusive of taxes, is reasonable. ( The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).)

**C) Capitalization Rate**

The Taxpayer estimated the overall capitalization rate to be 11.65 % for 1989 and 11.82 % for 1990. These rates included considerations for mortgage rates, equity requirements, holding period, any appreciation during the period and an effective tax rate.

The City determined an overall rate of 8.3 % for both years from an analysis of the ten sales previously mentioned.

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The board rejects the City's overall rate for the same reasons its expense estimates were rejected.

The board finds the Taxpayer's assumptions made in calculating the rate reasonable and in keeping with the board's knowledge of rates for this type of property during this time period. However, the Taxpayer made an error in calculating Nashua's 1989 effective tax rate which affected the overall capitalization rate. The 1989 effective tax rate was 15.2% (3.53% x .43), not 16.5%. Thus the 1989 overall rate should be 11.52% (10% + 1.52%).

**Summary of Market Value**

Based upon the findings above the market value of the Property is estimated as follows:

1989

Effective Gross Income	\$1,224,900
Expenses (-35 %)	\$428,715
Net Operating Income	\$796,185
Overall Capitalization Rate	11.52 %
<b>Estimated Value</b>	<b>\$6,911,300</b>

1990

Effective Gross Income	\$1,156,155
Expenses (-35 %)	\$404,654
Net Operating Income	\$751,501

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Overall Capitalization Rate 11.82 %

**Estimated Value \$6,357,875**

**(II) Proper Ratio(s)**

The City argued the board could not use the department of revenue administration's (DRA) equalization ratios because: 1) the ratios are statistically invalid; and 2) the Taxpayer did not provide evidence to support the ratios. Concurrent with this argument, the City argued the Taxpayer did not provide any evidence concerning the general level of assessments, and therefore, the board should deny the Taxpayer's appeals.

The board has already addressed this specific issue in Birch Pond Office Park Association v. City of Nashua, Docket Nos. 4246-88 and 5894-89 and in New England Life Insurance Company v. City of Nashua, Docket No. 8471-90. The board incorporates in this decision pages 8-13 of those decisions, excluding the specific calculations found on page 13. (Copy of decisions attached.) Some of the discussion below reiterates and reinforces the board's earlier conclusions.

**EQUALIZATION RATIO STATISTICALLY UNACCEPTABLE**

The City argued the equalization ratios were statistically unacceptable because:

1) the DRA's ratio studies were based on unrepresentative samples because the percentage of sales, by property class, used in the

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studies did not mirror the actual percentage of properties in each class existing in the City;

2) the sample sizes were inadequate;

3) the sales used in the studies were not time adjusted to April 1 of the subject years; and

4) the DRA did not verify all of the sales used in the studies.

The board reviewed the City's analyses and its testimony. The board rejects the City's conclusion that the ratio studies are so flawed that the ratios must be rejected. First, despite its criticism of the ratio studies, the City has acknowledged the DRA ratios were not far from the ratios that would have been calculated if the DRA had completed a statistically acceptable analysis.

Second, the board reviewed the City's analyses of the studies, using the International Association of Assessing Officers, Standard on Ratio Studies (1990). While the DRA's studies may not have complied precisely with the IAAO's standards, the studies were not so flawed as to be rejected.

In response to the City's specific arguments, we make the following observations. See also the Birch Pond decision.

1) Representativeness.

The IAAO standards do not require absolute identity between the sample, i.e., properties used in a study, and the population, i.e., the properties existing in a municipality. As stated in section 5.5 of the IAAO standards: In general, a ratio study is valid to the extent the sample is **representative** of the population. Ideally, the sample would mirror the population exactly. Operationally, representativeness

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is achieved when (1) appraisal procedures used to value the sample parcels are similar to procedures used to value the rest of the population, (2) sample properties are not unduly concentrated in certain areas or types of property that have been appraised differently from other properties in the population, and (3) sales or independent appraisals provide good surrogates for market values.

Therefore, we reject the City's argument that the ratio studies were flawed because the samples were unrepresentative.

2. Sample size.

The City critiqued the DRA's sample sizes, but the City's conclusions did not show the sample sizes were inadequate.

3. Time adjustment.

The City criticized the DRA's failure to time adjust the sales used in the study to April 1 of the subject years. While the IAAO does suggest time adjusting to a particular date, it is not a critical flaw in this case.

4. All sales not verified.

The City criticized the DRA's ratio studies because all of the sales used in the studies were not verified. Again, while the IAAO suggests that all sales be verified, we do not think the DRA's failure to verify all sales was a critical flaw. In the 1989 study, 70% of the sales were verified, and in the 1990 study, 71% of the sales were verified.

GENERAL LEVEL OF ASSESSMENT

The City also argued the equalization ratios could not be used by the

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board because the City did not stipulate to the ratios and the Taxpayer failed to provide evidence to support the equalization ratios or to demonstrate the City's general level of assessment. We reject the City's position.

Initially, we direct the parties to the Birch Pond decision for the board's response to this argument. Furthermore, we direct the parties to Dickerman v. Nashua, Docket No. 7273-89 and 8584-90. The board took official notice of that hearing. See RSA 541-A:18 V.

During the Dickerman hearing, the City testified the last general revaluation occurred for the 1981 tax year. From 1981 to 1989 and 1990, the City made only two adjustments to property assessments in the City: 1) adjusted the assessments on commercial properties along the Daniel Webster Highway; and 2) adjusted the assessments on condominiums (1989). With the exception of these two adjustments, the City made no studies or adjustments to assessments based on relative changes in the market. In other words, the assessments now under appeal were derived from 1981 market data with one adjustment even though the market changed dramatically from 1981 to 1989 and 1990.

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Obviously the City's failure to annually review assessments raises several questions concerning proportionality, which the City cannot answer. The specific question now being whether the appealed properties were equitably assessed. At the Dickerman hearing, the City admitted it did not know whether the appealed assessments were proportional or not. Mr. Fedele, the City's assessor, admitted that using the 1981 market and cost data may not result in proportional assessments in 1989 and 1990. Mr. Fedele said:

"Whether that's [the method used by the City] proportional or not, the City really has no idea at any point whether an assessment is proportional in that regards. We really don't. It becomes a matter of whether a taxpayer brings in information relative to the proportionality of an assessment that the City then goes back and reviews that information in that regards."

Additionally, Mr. Rousseau, the City's assessment manager, agreed the City is required to have an understanding of the general level of assessment within the City. Unfortunately, the City did not and does not have an understanding of the general level of assessment in the City for 1989 and 1990.

Based on the evidence presented, including the City's admissions, the board concludes the City has not complied with its obligations to ensure proportional assessments. Birch Pond discussed the law concerning these obligations. Having failed to fulfill its obligations, the City cannot now stonewall the Taxpayer's who have shown overassessment by equalizing the assessments with the applicable equalization ratios and then comparing those

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equalized values with the fair market value evidence.

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One factor underlying this decision is the reality that ratio studies require a significant effort and expense. The same is true for reviewing and supporting the DRA's study. At the Dickerman hearing, the City acknowledged that performing ratio studies was an onerous task - - too onerous for municipalities and too onerous for taxpayers. Specifically, the City stated an annual study would have been too burdensome to do because the City's assessment system from 1981-1992 was not computerized. If the task is burdensome for municipality, then certainly it would be prohibitive for all but the wealthiest taxpayers.

**Conclusion**

Therefore, the board's findings of market value in the first section should be equalized by the DRA ratios to arrive at the proper assessments of:

1989 \$6,911,300 x .43 = \$2,971,850

1990 \$6,357,875 x .47 = \$2,988,200

If the taxes have been paid, the amount paid on the value in excess of the above stated assessments shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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Board's Findings & Rulings

The board is faced with two general issues as argued by the parties:

(I) what were the proper estimates of market value for the Property for the two years under appeal; and

(II) what ratio(s) should be applied to the estimates of market value to arrive at the proper assessments.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Pine Hill Gardens Associates, Taxpayer; and Chairman, Board of Assessors of Nashua.

Dated: December 30, 1992

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Valerie B. Lanigan, Clerk

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**ORDER**

This order relates to the "City's" Motion for Rehearing. The request was received by the board more than 20 days after the December 30, 1992 decision.

Therefore, the request is denied. See RSA 541:3.  
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

I certify that copies of the within Order have this date been mailed, postage prepaid, to Pine Hill Gardens Associates, taxpayer; and Chairman, Board of Assessors of Nashua.

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Valerie B. Lanigan, Clerk

Date: February 1, 1993  
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