

Held Realty Trust

v.

City of Franklin

Docket No.: 7095-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1989 assessment of \$1,360,200 (land, \$347,800; buildings, \$1,012,400) on its real estate on Daniel Webster Drive, consisting of a 3-story apartment building of 29 units on 4.42 acres known as Webster Heights Apartments (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was 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 assessment was excessive because:

- (1) the Property experienced a 33 percent vacancy with declining rents;
- (2) the market change resulted in a drastic fall in value;
- (3) land value was too high due to PSNH easement;
- (4) it did not reflect the Property's income and expenses;

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(5) the 1-bedroom and small 2-bedroom apartments were difficult to rent due to size.

The City admitted a 15% adjustment would be recommended, but the Taxpayer's \$900,000 figure was too low given the market sales in 1988, including the Taxpayer's 1988 purchase. The board disagrees with the City and orders a \$900,000 assessment.

The Taxpayer's 1988 purchase price was not indicative of the Property's 1989 market value. While neither party presented 1989 sales of comparable properties (there apparently were none), the Taxpayer's testimony about the rental market demonstrated the Property's value dropped from 1988-1989. We find that the Taxpayer made all due efforts to rent these apartments.

Lacking good comparable sales, the board calculated the Property's value using the income approach.

\$180,000	potential gross income
<u> x</u>	<u>.610% vacancy, 30% expenses</u>
\$108,000	
<u> :</u>	<u>.12 capitalization rate</u>
\$900,000	value

The board selected the high end of the Taxpayer's gross rents, i.e., no reduction was given to reflect utility rebate or free-rent inducements. These rents were consistent with market rents.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not

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allocated the value between land and building, and the City shall make this allocation in accordance with its assessing practices.)

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If the taxes have been paid, the amount paid on the value in excess of \$900,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Laurance A. Held, Chairman, Board of Assessors of Franklin; and Scott Bartlett, MMC.

Dated: July 20, 1992

Valerie B. Lanigan, Clerk

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