

Allen F. Dickerman, Trustee of Mountain View Realty Trust
and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos.: 7273-89 and 8584-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the following 1989 and 1990 assessments on two apartment complexes (the Properties).

Property Land Building Total Assessment

Mountain View \$440,500 \$3,573,200 \$4,013,700; and
Chateau Richeleiu \$392,600 \$2,913,100 \$3,305,700.

For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried this burden and proved disproportionality.

The Taxpayers estimated the Property values by using the income approach. The Taxpayers did not include taxes as an expense, and the capitalization rate was based on the a band-of-investment method that included the tax rate.

The City submitted a report, estimating the Properties's values by two

approaches. First, the sales-comparison approach was employed with the gross-rent multiplier (GRM) method being the unit of comparison. The GRM was calculated from 10 sales of apartment complexes. Second, the income approach was used. In the income approach, the City included taxes as an expense and used an overall capitalization rate based on sales. The following summarizes the values presented to the board.

<u>Property</u>	<u>Assessment</u>	<u>1989</u>		
		<u>Equalized Assessment</u>	<u>Taxpayer's Market Value</u>	<u>City's Market Value</u>
Mountain View	\$4,013,700	\$9,334,190	\$3,114,466	\$10,800,000
Chateau Richeleiu	\$3,305,700	\$7,687,675	\$5,379,350	\$ 7,850,000

<u>Property</u>	<u>1990</u>			
	<u>Equalized Assessment</u>	<u>Taxpayer's Assessment</u>	<u>City's Market Value</u>	<u>City's Market Value</u>
Mountain View	\$4,013,700	\$8,539,790	\$3,593,313	\$10,200,000
Chateau Richeleiu	\$3,305,700	\$7,033,405	\$5,955,912	\$ 7,420,000

(The Equalized assessments were calculated by dividing the assessment by the applicable department of revenue (DRA) equalization ratio)

Board's Findings & Rulings

The board must decide 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 ratios should be applied to the estimates of market value to arrive at the proper assessments.

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 3

I ESTIMATES 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 Taxpayers relied upon actual income for the Properties (which by its very nature includes rental income and any miscellaneous income reflecting actual vacancy and collection losses). The board accepts the City's EGIs as the best evidence since it is based upon general rental market data reflective of market rents and vacancies. The City estimated the Properties' EGIs by reviewing market rents and vacancy rates for comparable properties in the City.

The following are the parties' EGI estimates.

1989

	<u>Taxpayers</u>	<u>City</u>
Mountain View	\$1,267,079	\$1,378,692
Chateau Richeleiu	\$ 959,056	\$1,003,104

1990

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 4

	<u>Taxpayers</u>	<u>City</u>
Mountain View	\$1,400,316	\$1,300,823
Chateau Richeleiu	\$1,032,927	\$ 947,376

b) Operating Expenses

The Taxpayers, again relying upon actual expenses, estimated the following expenses as a percentage of EGI.

	<u>1989</u>		<u>1990</u>
Mountain View	33%	Mountain View	34.4%
Chateau Richeleiu	34.3%	Chateau Richeleiu	30.7%

The Taxpayers testified that the expenses excluded property taxes.

The City used a 35% 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% estimate. The City testified the income data from the ten sales included property taxes as an expense, and thus, the 35% estimate for the subject property included property taxes.

The board rejects a strict adoption of either party's figures as it finds some shortcomings in both. The board's analysis shall be discussed following the discussion of the capitalization rate.

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 5

c) Capitalization Rate

The Taxpayers estimated the overall capitalization rate to be 11.70 % for 1989 and 12.0% 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 estimated an overall (OAR) rate of 8.3 % for both years from an analysis of the ten sales to be discussed next. The board finds

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 6

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.

Analysis of City's Sales Study

The board finds the City's estimate of expenses and determination of an overall capitalization rate to be 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 was flawed for several reasons:

- A) the sales data was received mostly from third parties and was not verified;
- B) the City did not adjust 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. The Property Appraisal and Assessment Administration, International Association of Assessing Officers, 270-72 (1990), states:

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 7

Capitalization rates change over time, especially with changing interest rates and changing supply and demand 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 adjustments 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 type was just past its apex and dropping with increasing vacancy rates, financing uncertainties and an oversupply of rental units. Thus, the two time periods were 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 the

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 8

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% 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).

d) Market Values

Using the income approach, the board finds the following market values.

	<u>1989</u>		<u>1990</u>
Mountain View	EGI	\$1,380,000	\$1,300,800
	Expenses (w/o taxes)	35%	35%
	Net Operating income	\$ 897,000	\$ 846,000
	OAR	11.5%	11.5%
	Estimated value	\$7,800,000	\$7,357,000
Chateau Richeleiu	EGI	\$1,003,000	\$947,400

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 9

Expenses (w/o taxes)	35%	35%
Net Operating income	\$ 652,000	\$616,000
OAR	11.5%	11.5%
Estimated Value	\$5,670,000	\$5,357,000

(all figures rounded to nearest thousand)

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 10

II ASSESSMENTS

The market values must now be converted to assessments. The City argued the board could not use the DRA's equalization ratios because: 1) the ratios are statistically invalid; and 2) the Taxpayers did not provide evidence to support the ratios. Concurrent with this argument, the City argued the Taxpayer's did not provide any evidence concerning the general level of assessments, and therefore, the board should deny the Taxpayers' 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 studies did not mirror the actual percentage of properties in each class existing in the City;
- 2) the sample sizes were inadequate;

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 11

- 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.

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 12

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 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

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 13

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.

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 14

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 board because the City did not stipulate to the ratios and the Taxpayers 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,

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 15

we direct the parties to the Birch Pond decision for the board's response to this argument.

Furthermore during hearing, in this case 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.

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. During the 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

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 16

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 equalized values with the fair market value evidence.

One factor underlying this decision is the reality that ratios studies require a significant effort and expense. The same is true for reviewing and supporting the DRA's study. The City acknowledged, during the hearing that performing ratio studies was an onerous task - - too onerous for municipalities and too onerous for taxpayers. Specifically, the reason the City had not done an annual study was because it would have been too onerous. The City testified the task was too burdensome because the City's assessment system from 1981-1992

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 17

was not computerized. If the task is burdensome for municipality, then certainly it would be prohibitive for all but the wealthiest taxpayers.

Applying the DRA's equalization ratio to the board's market values results in the following assessments.

	<u>1989</u>	<u>1990</u>
Mountain View	\$3,354,000	\$3,457,800
Chateau Richeleiu	\$2,438,100	\$2,517,800

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 18

Conclusion

If the taxes have been paid, the amount paid on the value in excess of those listed above 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 Allen F. Dickerman; and Chairman, Board of Assessors of Nashua.

Dated: January 6, 1993

Valerie B. Lanigan, Clerk

0008

Allen F. Dickerman, Trustee of Mountain View Realty Trust
and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 19

Allen F. Dickerman, Trustee of Mountain View Realty Trust
and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 20

**Allen F. Dickerman, Trustee of Mountain View Realty Trust
and Allen F. Dickerman, Individually**

v.

City of Nashua

Docket Nos.: 7273-89 and 8584-90

ORDER

The board received a motion for rehearing from the City on January 22, 1993, in which was raised, among several issues, that "the board refused to permit the City to cross-examine the taxpayers' witnesses."

Before ruling on these motions, the board orders the City to file a response on two issues:

1) with reference to the hearing tape, state when the board refused to permit the City to conduct cross examination; and

Allen F. Dickerman, Trustee of Mountain View Realty Trust

and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 21

2) file written offer of proof as to what needs to be covered on cross examination to satisfy RSA 541-A:18 IV, stating what witnesses and issues the City needs to cover through cross examination. See Petition of Betty Sprague, 132 N.H. 250, 259 (1989).

Allen F. Dickerman, Trustee of Mountain View Realty Trust
and Allen F. Dickerman, Individually

v.

City of Nashua

Docket Nos. 7273-89 and 8584-90

Page 22

The City shall file its response with the board within 20 days from the clerk's date below.

Note: The City may listen to the tape at the board's office by calling the clerk and scheduling a time to use the tape machine. Alternatively, the City may obtain a copy of the hearing tapes.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to John O'Connor, Taxpayers' representative; Mark J. Bennett, Esq., representing City of Nashua.

Dated:

Valerie B. Lanigan, Clerk

0008