

**Mitchell and Erika Greenwald**

**v.**

**City of Keene**

**Docket No.: 12344-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$1,332,500 (land \$300,300; buildings \$1,032,200) on a 1.73-acre lot with a building containing 34 apartments, 4 offices, and a laundry (the Property). The Taxpayers also own, but did not appeal, three other properties in the City with a combined, \$1,882,800 assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:  
(1) an estimate by the income approach utilizing actual income and expenses indicates a proper assessment should be \$881,356;

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(2) due to its proximity to Keene State College, the apartments are of a dormitory style and the marketing and occupancy is dictated by the seasonal academic year;

(3) Keene State College built two new dormitories subsequent to the purchase of the Property in 1990;

(4) the college student tenants in the apartments affect the vacancy rate of the first floor office rentals;

(5) due to the student rental market for the Property, the management and repair and maintenance estimates are higher than the 5% estimated by the City; and

(6) the Property is more comparable to commercial downtown property rather than the residential complexes submitted by the City.

The City argued the assessment was proper because:

(1) the Property was purchased in 1990 for \$800,000 and two subsequent building permits were issued with an estimate of the renovations at \$607,100;

(2) the 1991 assessment takes into account the purchase and subsequent renovations made to the Property as of April 1 1991; and

(3) the Property is unique due to its mixed use and transitional neighborhood; thus an analysis of comparable properties is difficult to determine an equitable assessment.

#### Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$1,190,000. 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. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of

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Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the City shall make this allocation in accordance with its assessing practices.)

The board finds that an abatement is warranted for two general reasons:

- (1) the Property has unique factors that affect its market value; and
- (2) an estimate by the income approach indicates the assessment is excessive.

The City testified their estimate of assessment was influenced by the Taxpayers' purchase of the Property in 1990 for \$800,000 and the subsequent renovations amounting to slightly over \$600,000. Further the City, testified that an outstanding mortgage of \$1,600,000 for the Property and two other properties owned by the Taxpayers provided some indication of market value. The City testified that the actual assessment was arrived at by factoring an earlier base year assessment by a 5.17 factor after depreciating the building 10% for physical and any functional or economic obsolescence.

The board finds that the City's cost approach sets the upper limit of any conceivable value but does not adequately recognize the unique factors affecting the Property's value. The Property is essentially a privately owned dormitory with several office rentals located within one block of Keene State College. Due to the Property's proximity to the college and the dormitory configuration of the renovations, the Property will inherently require more intensive management, generally have higher maintenance costs due to the physically active nature of the tenants and will have vacancy rates largely determined by the seasonal rental cycle

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of students. While as of April 1991 there was very little rental history to be of assistance in appraising the Property, these factors were inherent in the Property and would be considered by any knowledgeable prospective purchaser. (Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (municipalities must consider all relevant factors in determining an equitable assessment)).

To estimate value for a start up property such as the one under appeal, ideally a discounted cash flow projection and analysis would form a reasonable basis for value if the assumptions made in the analysis are reasonable. However due to the limited evidence submitted, such an approach cannot be calculated without the board making assumptions that are not based on facts before it. Therefore, the board has attempted through the direct capitalization method to estimate a value by estimating the income and expense figures that would be reasonable for this Property.

The board finds it is reasonable to estimate income and expenses as of April 1, 1991. This is the method any prospective purchaser would have to estimate the value of this Property as of that time. The board finds the best estimate of market rents and vacancy would be similar to the Taxpayers' actual 1991 figures. 1991 was the first full year the Taxpayers' were able to lease the Property. Notwithstanding the management issues involved in this type of property, the asking rents and the achieved occupancy rate of approximately 88% seem reasonable for this type of property. Likewise the estimated expenses that both the Taxpayers and the City agreed upon for heat, rubbish, water, electricity, insurance, plowing and landscaping appear to be reasonable pro-forma estimates. The board further finds an estimate

for maintenance at 10%, management at 8% and reserves for replacement at 5% are reasonable based on the type of property in question.

The board finds both parties' estimate of a capitalization rate to be lacking. The Taxpayers stated their 11.5% rate was derived from surveying local lending institutions. However, no documentation was submitted to the support that estimate and to clarify whether the rate included the tax rate factor. The City's use of a simple mortgage rate of 9% to which the tax rate did not properly consider an appropriate equity yield rate and a reasonable holding period and any equity buildup. The board finds a mortgage constant of approximately 10% would be reasonable for this type of property based on a mortgage rate of 9% and consideration of the other factors just mentioned. This would result in an overall rate of approximately 12.82% with the addition of the 1991 equalized Keene tax rate of 2.82%.

Based on the above findings, a summary of indicated value by the direct capitalization income approach is as follows:

Effective gross income	-	\$249,000
Expenses		<u>\$ 96,450</u>
<b>Net operating income</b>		\$152,550
÷ overall capitalization rate	<u>.1282</u>	
<b>Indicated Value</b>		<b>\$1,190,000 (rounded)</b>

While generally it is not desirable to determine the market value of a property solely by the direct capitalization approach, the board finds the Property was so unique as to its type and location and without any rental history as of the date of the assessment the other two approaches to value would be speculative. While the replacement cost of the Property could be readily determined, the

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appropriate depreciation (especially economic depreciation) could not be reasonably determined from the market. Likewise due to the Property's uniqueness, the direct sales comparison approach would be difficult because of the lack of comparable sales. In short the board finds this income approach more accurately reflects the inherent factors affecting value of the Property than the City's estimate that was largely influenced by the Taxpayers' investment in the Property.

If the taxes have been paid, the amount paid on the value in excess of \$1,190,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the City shall also refund any overpayment for 1992 and 1993. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.1

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mitchell and Erika Greenwald, Taxpayers; and Chairman, Board of Assessors, City of Keene.

Dated: August 24, 1994

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Valerie B. Lanigan, Clerk