

5/17/00

SUMMERFIELD HOUSING I LIMITED
PARTNERSHIP

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No. 98-RP-**PG**-0528 (1-6)

and

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SUMMERFIELD HOUSING LIMITED
PARTNERSHIP

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No. 98-RP-**PG**-0767

vs.

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IN THE

SUPERVISOR OF ASSESSMENTS
OF PRINCE GEORGE'S COUNTY

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MARYLAND TAX COURT

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MEMORANDUM OF GROUNDS FOR DECISION

This property tax appeal involves the assessment of the Summerfield Military Housing Project in Landover, Prince George's County, Maryland.

The project contains 1,242 rental units located on 231.64 acres of land. It was constructed in the early 1990's for lease to the U.S. Government to provide housing for enlisted military personnel. It consists of townhouses, duplexes and garden apartments and is located inside the Capital Beltway in Prince George's County.

Of primary concern to the parties is a long term agreement, the Lease (Petitioner's Exhibit No. 8) between the property owner and the military which impacts income received on this property notwithstanding a successive owner.

The project contains a greater than average number of three bedroom units compared with an otherwise comparable "market place project" which is more generally oriented towards one and two bedroom apartments. This feature is reasonably expected in fulfilling the needs of military housing.

The property and the financing arrangement used to allow for its existence are unique. The evidence clearly provides that the property's appeal is to a national market (other "801" projects) and that local sales and rents would not be considered as comparable at least within the period of the present lease agreement. This market limitation should control the development of both the market approach and the development of a capitalization rate or discount rate using comparable sales.

The principle owner, Hunt Building Corporation, was awarded this project after it had been bid out on a nationwide basis. Apparently, Hunt had also bid on numerous other "801" projects and had been awarded six.

Evidence is clear that the lease arrangements are not market oriented. As an example, the two bedroom, three bedroom and four bedroom units all rent for the same amount.

The Section 801 Program making the arrangements for the operation of the subject property was not extended by Congress beyond 1991. The authority for "new" leases expired at that time. The Section 801 Program had an eight year history during which approximately 40 leases with the different military services controlled the construction for approximately 13,000 family housing units. Its purpose was to provide incentives for private industry to develop good low cost military housing.

There is no "termination for convenience" provision in the agreement, which ordinarily would be included, and which allows the government an easy out should the contract become less economically attractive due to a required consistent level of rent for property no longer deserving.

As explained by Petitioner in its Memorandum of Law, there are numerous terms of the Lease Agreement between the United States Government and Hunt Building Corporation which do not reflect real estate standards or practices in drafting such leases. However, we are not so concerned with a "Lease" but with a contractual agreement which will be binding on a hypothetical purchaser impacting value (increase or decrease) due to the impact on cash flow.

In Supervisor v. The Ort Children Trust Four, 294 Md. 195 (1982), Judge Rodowsky explained that the value of income producing property can be effected by events which impact its capacity to produce income. The market place will consider either a positive or negative impact and, accordingly, such evidence, if available, is important in determining the property's value. In Ort, the property was subject to a long term lease which had been entered into at "arms length" but which limited the return of income to the owner at a level below market. Because this reduced income capacity would also be binding on any subsequent purchaser for the remaining lease period, the Court affirmed the consideration of the impact by the lower courts.

Interestingly, it appears that in this case, the Respondent argues that the situation is the opposite of Ort. We again have a long term lease which was arms length at the time of formation, but which apparently provides for a return of income greater than that which would be ordinarily allowed for by the market.

In reviewing the evidence presented, this Court must look for the extent of the alleged impact on the capacity of the property to earn income.

In this regard, the discount rate and the means used to achieve the rate have great weight. At page ten of the Respondent's Reply Memorandum of Law, Mr. Lyon, Respondent's counsel, explains the Supervisor's position as follows:

"The biggest difference was with the discount rate. Lipman chose a discount rate based on the sale of other commercial properties, particularly, but not exclusively, apartment projects. As admitted by Lipman, those projects would have all been subject to the normal risk factors, including the risk related to rent payment, the risk related to anticipated income growth, plus the risk of excessive growth of expenses, high vacancy and management. None of those risks applied to this leasing arrangement where the lessee rented the entire project, managed the entire project, and paid the rent for the entire project regardless of vacancy. In the valuation of a property subject to an *Ort/Berman* lease, the selection of a discount rate related to apartments free and clear of a long term leasing arrangement is wrong for the same reason as using rents from the marketplace. That discount rate is not applicable to the long term relationship and that error is not corrected, as suggested by Lipman, simply by choosing a lower discount rate within the range of apartment projects.

In contrast, Mr. McGucken analyzed the lease and found a flat, stable income stream for a specific time period paid by the federal government. He testified that type of return was similar to a return on a bond. However, he then adjusted it for the risks related to a real property project, including the lack of liquidity, and for the risks of this project, including the small amount of management risk. Consequently, while Mr. Lipman's discount rate is compared to the discount rates for other apartment projects without any adjustment for the special nature of this lease, the assessor has tailored his discount rate to this 801 military housing lease."

This insightful explanation represents part of the *McGucken/Hensley* appraisal, and the appraisal as a whole is convincing. The Petitioner has not convinced the Court that the Respondent's analysis of value is incorrect and has not presented sufficient evidence of its own justifying a finding in its favor.

Accordingly, based on applicable law and the evidence presented, the subject's indicated value for the year in question is \$99,263,325. The decision of the Property Tax Assessment Appeals Board is therefore reversed.