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Regency West Apartments LLC v. City of Racine

Supreme Court of Wisconsin - December 22, 2016 - N.W.2d - 2016 WL 7407487 - 2016 WI 99

Owner of apartment complex subject to low income housing tax credits brought actions against city to recover refunds from claimed excessive taxation.

The Circuit Court dismissed the claims. Owner appealed, and the Court of Appeals affirmed. The Supreme Court granted owner's petition for review.

The Supreme Court of Wisconsin held that:

- Income approach required calculation of net operating income based on income and expenses specifically projected for the complex;
- Appraiser could not derive the capitalization rate from market-rate properties;
- Sales of three properties were not "reasonably comparable" arms-length sales as required for assessor to rely on the sales when assessing apartment complex; and
- Evidence was sufficient to meet burden of showing that city's assessed value of $4,169,000 was excessive.

Using best information available, income approach to valuing apartment complex property required calculation of net operating income based on income and expenses specifically projected for the subject property, rather than calculation of net operating income through mass appraisal techniques.

An appraiser must not value federally regulated housing as if it were market-rate property, as doing so causes the assessor to pretend that the subject property is not hindered by federal restrictions. The restrictions and underlying agreements implicit in federally regulated housing will affect the property's value.

Sales of three properties were not "reasonably comparable" arms-length sales as required for assessor to rely on the sales when assessing apartment complex. While subject complex was built using tax credit program, one comparable sale property was mostly market-rate rentals, while others used Section 8 rent subsidy credits, and rents at subject property were not subsidized by the government.

Apartment complex owner's evidence in tax refund action was sufficient to meet burden of showing that city's assessed value of $4,169,000 was excessive. Complex used third tier direct capitalization of income appraisal which employed actual expenses and income for the property upon which the net income was calculated, appraisal derived its capitalization rate from a market for tax credit properties, and appraisal determined that the property's value was $2,730,000.