Factors To Be Considered In Determining the Just Value of Property Acquired, Rehabilitated or Constructed Pursuant to Federal Laws Related to Affordable Housing

REPORT

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A Report Prepared for the Joint Standing Committee on Taxation

Department of Administrative and Financial Services
Maine Revenue Services
Property Tax Division

Introduction

This report is presented in accordance with Resolve 2006, ch. 170, "Resolve, Concerning the Assessment of Property Subject to Affordable Housing Limitations and Benefits" directing the Bureau of Revenue Services ("the bureau") to review the factors that should be considered by municipal assessors when determining the just value of property acquired, rehabilitated or constructed pursuant to federal laws related to affordable housing for low-income persons and to present a report describing the results of its review. In preparing this report the bureau consulted with representatives from the Maine State Housing Authority ("MSHA"), representatives of affordable housing project developers, municipal assessors, the Maine Municipal Association, and other experts in the field.

The valuation of low-income housing properties for property taxation is a complex issue due to the rules and restrictions imposed on such properties. The factors which present special concerns are government restrictions on rents and tax credits available to investors.

Part I of this report briefly summarizes the Low-Income Housing Tax Credit Program and sets forth the factors involved in valuing properties that are supported by the program. Part II provides a description of how other states treat valuation issues for affordable housing projects. Part III evaluates the application of the Maine Constitution and statutes to assessment practices for affordable housing projects. Part IV describes practices used in Maine to assess affordable housing projects. Part V presents the bureau's recommendation.

Part I

A. Low Income Housing Tax Credit Program: Background

1. Federal Laws Related to Affordable Housing for Low-Income Persons

The Tax Reform Act of 1986 ("1986 Act") removed the income tax benefits of accelerated depreciation for new projects and imposed limitations on passive losses. The elimination of these tax benefits resulted in a decline of investment in federal programs administered through the United States Department of Housing and Urban Development, including Section 8 of the Untied States Housing Act of 1937, section 515 of the Housing Act of 1949, and other laws which were created to increase access to affordable housing.

To offset these changes, in an attempt to preserve the incentive for investing in low-income housing projects, the 1986 Act also provided for a federal low-income housing tax credit program codified as Section 42 of Title 26, the Internal Revenue Code ("Code") and known as the Low-Income Housing Tax Credit ("LIHTC") program. This program is now the primary federal program for subsidizing the production of affordable housing. Accordingly this report will focus on the LIHTC program as the model for the discussion of factors that affect the determination of the just value of property acquired, rehabilitated or constructed pursuant to federal laws related to affordable housing. Many of the factors and some of the same considerations are applicable to other federal housing assistance programs.

2. Contracts and Agreements/Method of Allocation of Credits to State

Each year the federal government allocates a fixed amount of low-income housing tax credits to each state. The allocation is calculated based on a dollar amount per capita derived from population estimates. Maine's allocation for 2006 was $2.5 million. Under section 42 each state must annually adopt a qualified allocation plan describing how its annual share of federal tax credits will be allocated among eligible, competing projects. Although section 42 prescribes certain criteria that must be followed in each state's allocation plan, the statute provides considerable discretion to the states to tailor their allocation plans to suit local needs.

The MSHA is the designated housing credit agency for Maine and is responsible for developing the state's annual qualification allocation plan. Once a tax credit allocation is received, the State monitors the recipient's compliance with federal and state regulations. [1] There are currently about 150 operating tax credit projects in Maine.

B. Factors Involved In Valuation

To value a tax credit project, it is important to have an understanding of how tax credit projects are financed. In general, the financial structure of a tax credit project is similar to that of all other projects- total project capital is composed of debt and equity portions.

[1] Maine State Housing Authority's qualified allocation plan is Maine State Housing Authority Rule 16.

The major difference with a tax credit project involves the mechanism through which the tax credits allocated to the project are converted into the project's equity financing.

1. Government Subsidies

Under section 42, eligible taxpayers may take a credit against federal income taxes due for qualified expenditures involving qualified low-income housing projects. [2] The availability of the tax credit program encourages new or renovated housing for lower income families in areas where the market rents do not provide the financial incentive for developers to invest in providing housing.

2. Restrictions on Use

In exchange for the tax credits, the project owners are required to enter into a recorded regulatory agreement with the MSHA, restricting the use of the property to its terms. Use restrictions are recorded as deed restrictions and are binding on successor purchasers.

In order for a project to qualify for tax credits, it must meet a threshold minimum "set aside" test which can be satisfied in either of two ways:

1. Twenty percent or more of the units must be rent restricted and occupied by individuals with incomes of 50 percent or less of area median income adjusted for household size; or
2. Forty percent or more of the units must be rent restricted and occupied by individuals with incomes of 60 percent or less of area median income adjusted for household size.

Gross rents (including utilities other than telephone) must not exceed 30% of the tenant's imputed income which must be 50%-60% of area median for a unit of a particular size. Other limitations apply as well. For example, the initial lease term for a tenant usually must be at least 6 months (with some limited exceptions), tenants cannot be full-time students (with some exceptions), and the units must be available to the general public.

Although the tax credits are distributed evenly over a ten-year period, the project must be maintained as low-income housing for a 15 year "compliance period," beginning with the 1st taxable year of the credit period. In addition to the 15 year compliance period all projects receiving credits after 1990 must comply with an extended low-income housing use agreement entered into between the State credit allocation agency and the project owner. In Maine restrictions regarding occupancy to low income housing residents and sale or conveyance of such property are for a period of 90 years. Recapture of a portion

[2] Maine does not have a state low-income housing tax credit program to augment the federal program. There are no state tax credits to offset Maine State income tax liability. However capital gains or depreciation recapture associated with the sale of "multifamily affordable housing property" is exempted from Maine income tax. 36 M.R.S.A. §5122(2)(Q) & §5122(2)(U). "Multifamily affordable housing property" includes property funded by the United States Department of Housing and Urban Development, the United States Department of Agriculture or the Maine Housing Authority and property that qualifies for low-income housing credits under Section 42 of the Code.

of the credits is required if the property does not remain both income and rent restricted or if the property has serious building code violations.

3. Tax Credits

The maximum amount of tax credits that may be allocated to a given project is determined by criteria set forth in section 42. Those criteria are total development cost, eligible basis, eligible fraction, qualified basis and tax credit rate. Each of which is briefly described below.

- The total development cost of a tax credit project includes all the components of full economic cost- all hard and soft costs included in a cost approach.
- Eligible basis is total development costs less the cost of land and certain soft costs. Only costs of depreciating assets may be included in eligible basis. Eligible basis is the portion of a project's total development cost that may be considered when determining the maximum amount of the tax credits available to the project.
- Eligible fraction is the percentage of low-income units in a project. According to MSHA, in Maine most often 100% of project units are dedicated to low-income occupancy.
- Qualified basis is the eligible basis multiplied by the eligible fraction.

Section 42 establishes two tax credit rates. For projects that are not financed with a federal subsidy, the tax credit rate is 9%. For projects involving a federal subsidy and for projects where tax exempt bonds provide at least 50% of the project capital, the rate is 4%. The tax credit rate is multiplied by the qualified basis to determine the maximum annual tax credit amount for a project (the maximum annual amount of tax credits allocated to a project for each year of the 10-year tax credit period.)

The amount of tax credits allocated to a project ultimately determines the amount of equity funds that can be raised to finance the projects development. A significantly higher proportion of the equity to finance a project's total development cost can be raised at the 9% credit rate than at the 4%. For example, if a project's qualified basis were $1,000,000, at the 9% tax rate, the project would receive $90,000 in tax credits for each year of the 10 year tax credit period ($1,000,000 x 0.09), and at the 4% rate it would receive $40,000 in tax credits for each year. ($1,000,000 x 0.04).

Rarely are the credits of direct use to the developer. Developers need current equity to fund development costs. Consequently, developers sell the rights to the future credits in exchange for cash, a process called syndication. To be eligible for the tax credit the taxpayer must hold an ownership interest in a low- income housing project for which tax credits have been awarded. A limited partnership is formed with the developer of the project as general partner. Equity in the tax credit project is sold to investors in the form of limited partnership interests. The buyers of the tax credits become limited partners and equity holders in the tax credit project, which entitles them to claim future tax credits.

Typically the general partner of the limited partnership retains only a de minimus interest. The developer manages the project while the limited partners are passive investors. Thus, although it is commonly stated that the developer of a tax credit project raises equity funds by "selling the tax credits" what in fact are sold are limited partnership equity interests in the project that include rights to certain tax credits. Under section 42 of the Code, low income housing tax credits may only be claimed by owners of qualifying low-income housing; that is, tax credits cannot be claimed unless the taxpayer also holds a concomitant equity interest in a low-income housing project.

The required rate of return of the limited partner investors determines the price they will pay for the limited partnership interest. The higher the required rate of return the lower the cash proceeds from the sale of the limited partnership. The economic return provided to the limited partner investors is derived primarily from the right to claim future tax credits, not from the expected future operation of the project. Currently the 9% credits yield net cash proceeds equal to about 60% of a project's qualified basis, and the 4% credits equal about 30% of qualified basis.

4. Sales of Such Projects

The market for subsidized housing is different from the market for other investment property because of the inherent restrictions on income return to investors and the inability of the property owners to sell the projects without the expressed approval of the federal government and then only after certain regulatory requirements have been satisfied. These government subsidized projects present circumstances not normally found in other commercial property.

Part II

A. How Other States Treat Valuation Issues for Affordable Housing Projects

States have dealt with the question of valuation of affordable housing projects through the courts, by statute or both. Seventeen states, including Maine, have not specifically addressed the LIHTC issue either through the courts or by statute. Despite a growing number of court decisions and statutes addressing these issues the law is far from uniform.

1. State Statutes:

Twenty two states have statutory language addressing some portion of how LIHTC should be addressed in valuation. They are:

Alaska
California
Colorado
Florida
Georgia
Illinois
Indiana
Iowa
Maryland
Minnesota
Mississippi
Montana
Nebraska
New Jersey
New York
Oregon
Pennsylvania
Rhode Island
Texas
Utah
Vermont
Wisconsin

Of these 22 states very few have addressed both whether the LIHTC should be part of the valuation and whether the restricted rents should be considered in valuation. A majority of these states require that LIHTC properties be assessed under the income approach and that assessors exclude tax credits from the assessment process.

In October of 2005 New York State enacted a law addressing the valuation of LIHTC properties. California, Maryland, Nebraska, Illinois and Iowa, legislatures enacted statutes similar to New York. As an example, Maryland's statute states in relevant part:

In determining the value of commercial real property developed under Section 42 …the supervisor:

(i) shall consider the impact of applicable rent restrictions…required by section 42;

(ii) may not consider income tax credits under sec. 42…as income attributable to the real property; and

(iii) may consider the replacement cost approach only if the value produced by the replacement cost approach isles than the value produced by the income approach…

Other states like Georgia and Utah address the LIHTC valuation issue in broader terms. Georgia's statute provides in relevant part: "…the tax assessor shall not consider any income tax credits with respect to real property" when determining the fair market value of property.

2. State Court Decisions:

Eighteen states have court decisions specifically addressing the LIHTC issues. They are:

Arizona
Connecticut
Georgia
Idaho
Illinois
Indiana
Kansas
Michigan
Missouri
Montana
New Hampshire
North Carolina
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Washington

The decisions are not consistent in their holdings regarding whether market rents and LIHTCs should be considered in valuation, often holding that actual rents must be used but that LIHTC should be included.

(a) Inclusion of LIHTCs in Determining Value

With respect to the question of whether the LIHTCs must be included in valuation, the decisions have varied. Some state courts have found that the value of LIHTCs must be included in valuation because they make ownership of the property more desirable and enhance its market value. In Michigan the court found that the tax credits provided a considerable benefit to the owner and were transferable with the real estate and would be considered by the purchaser in a market transaction.[3] Courts in New Hampshire and South Dakota have decisions similar to the Michigan case.[4] Courts in North Carolina, Connecticut, Kansas, Tennessee and Idaho have also held that assessors should consider LIHTCs in their property tax assessments.

Some state courts have found that LIHTC are intangible but that their impact on real property must be included in valuation. On the other hand, courts in Missouri and

[3] Huron Ridge LP, v. Township of Ypsilanti, MTT Docket No. 292811 (Michigan Tax Tribunal 2004).

[4] Epping Senior Housing Associates, L.P. v. Town of Epping, (N.H. Bd. Tax & Land App. 2005); Town Square Ltd. P'ship v. Clay Bd. Of Equalization, 704 N.W.2d 896 (S.D. 2005).

Washington have found that credits are intangible and thus cannot be included as a characteristic of real property. [5]Some of these jurisdictions specifically prohibit inclusion of intangible values in a property's assessed value. In total only six state courts have held that tax credits should not be considered when valuing LIHTC properties.

(b)Use of Restricted Rent in Determining Value

With respect to the issue of whether a property's restricted rent must be considered as a factor in determining the fair market value of LIHTC property, the majority of courts have found that restricted rents should be used in the determination of market value. The rationale as expressed by an Oregon court is that rent restrictions, though voluntary, are similar to governmental restrictions such as zoning and must be included in valuation.[6]

[5] Maryville Properties, L.P. v. Nelson, 83 S.W.3^{d} 608 (Mo. Ct. App. 2002); Cascade Court, L.P. v. Noble, 20 P3d 997 (Wash. Ct. App 2001).

[6] Baybridge Assoc.Ltd. P'ship v. Dept. of Revenue, 892 P.2d 1002 (1995).

Part III

A. Application of the Maine Constitution and Statutes to Assessment Practices for Affordable Housing Projects

1. Valuation Factors

Article IX Section 8 of Maine's constitution requires that property taxes be apportioned and assessed equally according to just value. The Maine Law Court has stated that "just value" is equal to and equivalent to "market value" which is "the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used." Frank v. Assessors of Skowhegan, 329 A.2d 167, 173 (Me. 1974).

Title 36 Section 701-A provides that in determining just value assessors are to consider all relevant factors. All relevant factors include without limitation, the effect upon value of any enforceable restrictions to which the use of the land may be subjected, current use, physical depreciation, sales in the secondary market, functional obsolescence and economic obsolescence. Restrictions include but are not limited to zoning restrictions limiting the use of land, subdivision restrictions and any recorded contractual provisions limiting the use of lands.

The statute may set forth guidelines as to what factors should be considered, but as a constitutional matter, all factors relevant to the determination of just value must be considered regardless of additional statutory language. Any attempt at restricting by statute what the assessor may or may not consider would be a violation of the constitutional requirement to consider all relevant factors.

2. Intangible Property

In Maine there is no constitutional prohibition on taxation of intangible property. In fact Maine Const. Art. IX, §8 (1) provides that the Legislature has the power to tax intangible property. However the Legislature has chosen to limit direct taxation of personal property to "tangible goods and chattels." 36 M.R.S.A. § 601.

At the same time as noted above, many of the factors listed in 36 M.R.S.A. §701-A, as what an assessor is permitted to consider in assessing property at its "just value" include intangibles.

In Hydro Kennebec, L.P. v. Town of Winslow, Superior Court Civil Action Docket No. AP-04-90 (August 22, 2005) (appeal pending), the court considered whether it was proper to consider the value of an above market power purchase agreement ("PPA") between Hydro Kennebec L.P ("HKLP") and Central Maine Power Company when valuing HKLP's hydroelectric power generating plant. The Superior court responded to the petitioner's argument that the Legislature has chosen not to include intangibles in the definition of personal property and hence such property may not be considered in valuation, by stating that it was proper to consider the effect of the intangible on income generating capacity of the real asset with which it is associated- in this case the hydroelectric generating plant. The court found that the PPA was to be considered in determining the fair market value of the real property because the contract, albeit intangible property "is inextricably intertwined with the highest and best use of the real property being assessed." Id. at 2.

3. Maine Cases Considering Related Factors

Although Maine courts have not specifically considered the effect of the LIHTC program on valuation, the Maine Law Court did consider similar valuation issues for the valuation of property impacted by a federal housing subsidy program.

(a) Interest Rate Subsidy

Glenridge Development Co. v. City of Augusta, 662 A.2d 928 (Me. 1995) involved a low-income housing complex built with assistance from the United States Department of Housing and Urban Development ("HUD") under section 236 of the National Housing Act of 1937. The owner was subject to restrictions imposed by HUD and HUD subsidized the owner's mortgage. The City valued the property using the cost approach but substantiated the result using the income approach. The Maine Law Court found that it was proper for the assessor to have considered the interest rate subsidy as one relevant factor to be used in arriving at just value under 36 M.R.S.A. §706-A. The court further found that the assessor should have separately considered the effect of the regulations governing the housing complex, which included restrictions on "selling, refinancing, raising or lowering rents, or making improvements or major repairs without HUD's approval." However, the court found that this failure did not result in a finding that was manifestly unjust, and so did not discuss what weight these factors should have been given in the assessment.

(b) Lower than Market Rental Rates

In Sanford v. J & N Sanford Trust, 694 A.2d 456 (Me. 1997), the Maine Law Court found that the Board of Property Tax Review erred when it allowed for the use of the lower than market rents of property rather than market rent value in determining the value of a shopping center. The court found that it would not be equitable to shift the tax burden to property that is not income producing each time there was a temporary downward trend in the economy. Id. at 460. Arguably this case could support an argument that rent restrictions mandated by the LIHTC program may not be considered for purposes of valuation but that assessors must use market rents. However this result would not be consistent with the court's holding in the Glenridge case which stated that assessors must consider rent restrictions. In addition the lower than market rents required by the LIHTCs rules are not a result of a temporary economic downturn but are a long term restriction on the use of the property.

PART IV

1. Maine Assessing Practices: Background:

As evidenced by the number of states which have had court cases addressing the issue of LIHTCs, the valuation of affordable housing for property taxation purposes is a matter of controversy. When issues of public policy, property tax administration and appraisal practice become intertwined in valuing a property, there will be differing opinions regarding the proper methodology to use in the assessment of such property. Property tax administration outside of the New England states is generally conducted at the county government level. County assessment offices are typically well staffed and have access to people with the expertise to reasonably deal with more complex assessing issues.

In Maine, the property tax is administered at the municipal level. Municipal governments in Maine vary greatly in the level of staffing and level of expertise that they bring to the assessment process. Approximately 20% of municipalities employ a full time professional assessor while another 30% to 40% employ part-time or contracted assessing services. Only full time professional assessors, defined as devoting at least 75% of their time to assessment administration, are required to be certified by the Bureau of Revenue Services. Many municipalities still rely on their elected officials to perform the duties of assessor with most having little or no professional training in the assessing field.

Tax assessors are required by both statute and the Maine Constitution to determine the "just value" of taxable property. The Legislature has set some minimum standards with which assessors must comply but has stopped short of setting forth in statute the different methods which local assessors may use to achieve these standards. To successfully challenge the valuation of a property, a taxpayer must show that the appraisal approach used violates the constitutional mandate of equality and that the value reached by the assessor is so unreasonable that an injustice results.

2. Practices Used in Maine to Assess Affordable Housing Projects

In describing the valuation practices employed by municipalities, we will first review each of the approaches to value, and then describe how we see these approaches employed in the valuation of affordable housing.

A. Valuation Methods

(1) Market Data Approach: The market data or sales approach is the most direct approach in estimating market value. In simple language, it is estimating the market value of a given property by comparison with other similar properties in the same vicinity, which have been sold recently in the open market. The market data approach is concerned with the principle of substitution in that typical buyers will not purchase a property at a price higher than the prices of similar properties having comparable locations, characteristics and future earnings or utility capabilities. The market data

approach is generally preferred above all others. It is the most frequently used and the best understood of all the appraisal approaches. Under ideal circumstances it probably comes nearest to reducing the appraisal to the point of least approximation.

(2) Cost Approach: The cost approach, also known as depreciated replacement cost approach is an approach in which the assessors build or reproduce the property as if it were new. This is called "Replacement Cost New." Replacement Cost New figures are based on many factors including the size of the structure, the type of construction, the design and the quality of the materials. The land value is obtained by sales analysis of comparable vacant land. The "Replacement Cost New" is then reduced by any loss in value due to all causes such as physical deterioration, functional obsolescence and economic obsolescence. This method is popular with assessors because it lends itself to a systematic and uniform procedure for all properties. However in order to be most effective, this approach must be used in conjunction with the market and/or income approach to adequately measure obsolescence.

(3) Income Approach: The income approach is used in the valuation of investment properties such as stores, apartments, shopping centers, commercial buildings, and other real estate which is bought and sold primarily on the basis of the income produced. The value of such properties tends to be set by the quantity, quality and durability of the net income generated by the property. Capitalization of anticipated net income indicates the investment required to produce that income. Care must be used both in estimating net income and in selecting the proper rate of capitalization. The income approach is closely related to the market. When using the income approach, the anticipated income, operating expenses, land value, and proper capitalization rate are to be developed and checked for reasonableness by comparisons with similar rental/ income properties and investments.

B. Valuation of Affordable Housing in Maine

In addition to meeting with a number of assessors,, MRS conducted telephone interviews with many assessors in municipalities where LIHTC projects are located.

Market Data Approach:

Of the assessors interviewed, we did not find any municipality that used the market approach in the valuation of affordable housing. This was not surprising since sales of such properties rarely occur on the open market, and each affordable housing project is unique with respect to size, structure, income, expense and other characteristics which make the comparison to other properties almost impossible.

Cost/Income Hybrid Approach:

In the valuation of affordable housing properties, most assessors reported using a combination of the cost approach and the income approach. Many start with a cost approach and are only able to adjust their findings when the taxpayer provides information necessary to incorporate information on income. For affordable housing projects which involve restricted rents, the argument can be made that the market value of the property is likely to be below the value arrived at through the cost approach. This is because the cost approach does not measure the economic obsolescence caused by the restrictions placed on the property which limit the income potential of the project. For this reason it is important that owners of LIHTC property contact assessors to make them aware of the fact that the property is a LIHTC property and provide them with information regarding income. This information can only be accounted for when it is provided to the assessors. MRS found that in cases where information related to income of these properties was provided to assessors who initially used a cost approach, it was taken into account in valuing the property.

Income Approach:

The income approach is widely used by most of the full time assessors throughout Maine for the valuation of income producing properties, including affordable housing properties. Full time assessors who routinely use the income method to value income producing properties are more likely to solicit income information from project owners. A few if the larger municipalities with full time assessors will also employ an appraiser who specializes in the valuation of income producing properties. A growing number of municipalities are contracting the services of a commercial appraiser for purposes of valuing their income producing properties. That said there are differing opinions among assessors as to how the income approach is to be properly applied, with those differences generally centering around two related issues which have also been the subject of legislation and litigation in other states:

1) Are assessors compelled to use market rents instead of restricted rents in an income approach?; and
2) Where LIHTC are utilized for the financing of an affordable housing project, to what degree, if any, must they be considered as enhancing the value of the property?

i. Use of Restricted Rents:

A majority of the assessors we contacted have concluded the proper approach to the valuation of affordable housing, where long term enforceable restrictions exist prohibiting the conversion of the property to other uses, is the use of restricted rents in the application of the income approach. The primary reason given for the use of restricted rent instead of market rent is the effect that long term enforceable deeded restrictions have on limiting the income generating ability of the property. As noted, for more recent MSHA approved projects, the recorded restrictions exist for 90 years. Significantly however, a number of assessors noted the restricted rents as established by the LIHTC regulations did not differ measurably from the non-restricted market rents and therefore did not result in a significantly reduced valuation.

A small number of assessors have concluded that the restrictions were entered into voluntarily by the property owner and will be eventually extinguished. Therefore, they take the position that the property must be valued in the same manner as a housing property without restricted rents. These assessors rely in part on the Sanford case discussed above, where the Maine Supreme Court found that it was improper to use lower than market rents of property rather than market rent value in determining the value of income producing property. The court reasoned that it would be inequitable to shift the tax burden to non-income producing property. However, as also noted above, this case may be inapplicable since the court based its opinion on the fact that the lower than markets rents were in part due to what may have been a temporary downturn in the economy. In contrast LIHTC property has restrictions that are in effect for as long as 90 years.

Another issue which assessors regularly confront when using an income approach for affordable housing is allowable expenses. Affordable housing owners generally report significantly higher expenses for their operations than do owners of other housing projects. Affordable housing is generally characterized as requiring higher expenses. However, unless there is a clear demonstration of justification for the higher than average expenses, assessors will typically use the expenses reflective of the general market in their analysis.

ii) Use of LIHTC in Valuation:

In the consideration of the impact of LIHTC on the valuation of affordable housing projects, we found only one case where a municipal assessor has directly taken the tax credits into consideration in his valuation. The taxpayer did not appeal the valuation for the first two years of assessment. In the third year the taxpayer applied for abatement. The assessor granted an abatement which recognized that the enhancement in value which the credits provided to the property declined incrementally to zero over the 10 year period that the credits were used.

Part V

Recommendations

The provisions of the Maine Constitution and Maine statutes governing "just value" provide an adequate framework for how the just value of property, including affordable housing property, is to be determined. The law provides that all relevant factors must be considered in determining just value. To require assessors to consider some factors but not to consider others would violate the constitutional mandate. The framework allows for flexibility in arriving at a result that is not unjust. Where the taxpayer believes that the value determined by the assessor is unjust the appeal process through the administrative and court system provides the means for the taxpayer to demonstrate that the assessor's determination of value is unjust.

On a practical basis taxpayers also have the opportunity to work with assessors to arrive at just value. Many assessors begin with an income approach in the valuation of LIHTC property and are aware of the relevant factors to be considered. Some assessors who rely on the cost approach are open to considering income factors when those factors are presented by the taxpayer. Taxpayers have the opportunity to present their arguments both informally and formally through the abatement process.

Although there have not been any cases decided by the Maine Law Court regarding the valuation of affordable housing developed using LIHTC there are currently two cases involving this issue pending before the State Board of Property Tax Review and the possibility that three others may be appealed to the Board. Through this process guidelines will be developed by the Board and also by the courts if the Board decisions are appealed. It is in these administrative and judicial forums that the parties will have the opportunity to present arguments for and against including particular factors in the valuation of these properties. The courts can then weigh those arguments and make determinations as to what factors, and in what circumstances, those factors best reflect value.

There is sufficient existing statutory and constitutional law as well as court precedent upon which the parties may rely in presenting their arguments in the upcoming cases. Once decided, these decisions will serve as further guidance in this area. That guidance will assist assessors in their valuation work while at the same time afford them the flexibility required to consider all relevant factors.