

Assessing New Jersey Affordable Housing Units



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The state of affordable housing in New Jersey remains quite uncertain and confused in 2011. The legislative initiative, S-1, passed only to be conditionally vetoed by Governor Chris Christie. The COAH Third Round methodology continues to face numerous court challenges.

This past March, the New Jersey Supreme Court granted numerous petitions for certification of the October 8, 2010 Appellate Division decision which invalidated COAH Third Round regulations. It is likely that these cases will be argued in the late fall of 2011 with decisions expected in early 2012.

With the unsettled nature of municipal affordable housing obligations, most municipalities have been urged to "stay the course" and continue to implement an Affordable Housing Program that works and makes sense for their community. One of the easier areas that your community's elected officials must contend with is how to fairly assess affordable properties.

Appropriate and Fair Property Assessment Valuation of affordable housing units for local real property tax purposes was initially considered by the New Jersey Tax Court in

WHILE MANY ASPECTS OF NEW JERSEY AFFORDABLE HOUSING REMAIN UNSETTLED, ASSESSING AFFORDABLE HOUSING UNITS IS NOT ONE OF THEM.

Prowitz vs. Ridgefield Park Village, 10 N.J. Tax 103 (1988). In that case, taxpayers appealed judgments of the Bergen County Board of Taxation affirming 1986 local property tax assessments on their affordable condominium units. The affordable owners felt that the Tax Assessor of Ridgefield Park Village had incorrectly determined the assessment on their units. These taxpayers claimed that the affordability restrictions on resale should be considered in determining their assessed real property values. The taxpayers argued further that reduced assessment values would be in accordance with the public policy supporting affordable housing in New Jersey as set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.



By following the requirements of the Prowitz decision and utilizing the COAH calculators, affordable housing units within a given municipality can be fairly and properly assessed.

The New Jersey Tax Court rejected their arguments. The Court relied on Article VIII, Section 1, Paragraph 1, of the New Jersey Constitution of 1947. The Tax Court noted that the Constitution required that all real property must be "assessed according to the same standard of value" and that the assessment must always reflect "true value" pursuant to N.J.S.A. 54:4-2.25. The New Jersey Tax Court went on to cite case law to support the Court's determination that the value of the land is what must be assessed and that life tenancies, remainder interest, mortgage/mortgagee interest and similar restrictions on title (not land) do not diminish or reduce assessed value citing with approval *Trustees of Llewellyn Park vs. West Orange Township*, 224 N.J. Super, 342 (App. Div. 1988).

In the *Prowitz* decision, the New Jersey Tax Court did acknowledge that there were limited exceptions when restrictions could be taken into consideration when valuing land. In the Court's opinion, this would be appropriate if for example a conservation or other type of easement restricted the use or developability of land. The New Jersey Tax Court, however, was not persuaded that affordable housing deed restrictions on resale qualified as one of the "limited exceptions." Therefore, the court did not allow affordable housing units to be assessed with this restriction taken into consideration.

The taxpayers appealed. The decision was reversed (see *Prowitz vs. Ridgefield Park Village*, 237 N.J. Super 435 (App. Div. 1989). This reversal was affirmed by the New Jersey Supreme Court in 1991 (see *Prowitz vs. Ridgefield Park Village*, 122 N.J. 199 (1991). The Courts on appeal agreed with the arguments advanced by the affordable owners. The Court held that a local real property tax assessment of an affordable housing unit mandated that the affordable housing deed restrictions be taken into consideration, as they limit and affect resale value of the property. The Court noted in its decision that: (1) the undeniable effect that the deed restriction has on the full and fair value of the property has to be recognized; and (2) the finding that the deed restriction limited the land, not the title, as the New Jersey Tax Court below had concluded was wrong and

that the deed restriction had a depreciating effect on value analogous to a value-depreciating easement or other government regulation. In the *Prowitz* decision, the Appellate Division further noted:

The deed restriction limiting resale price constitutes a patent burden on the value of the property, not on the character, quality or extent of title. It is, moreover, a restriction whose burden on the owner is clearly designed to secure a public benefit of overriding social and economic importance, namely, the maintenance of this state's woefully inadequate inventory of affordable housing. *Id.* at 443.

Calculating Value Consistent with the *Prowitz* decision, the New Jersey Department of Community Affairs, Counsel on Affordable Housing (COAH) has developed calculators which allow municipal Tax Assessors to determine the initial sales price for affordable units in their community in compliance with the Uniform Housing Affordability Controls (UHAC.) (See COAH website at www.state.nj.us/dca/affiliates/coah/resources/calculators.) These calculators are available for

rental units, sale units, resale and refinancing and market to affordable units. If a municipality has an Administrative Agent, then the municipal Tax Assessor needs to check only with his or her Administrative Agent and the pricing for the affordable units can be easily determined.

If for example, a municipality has recently undergone revaluation and is assessing at 100 percent of true value, then the Assessor would simply use the restricted, maximum sales price to determine assessed value for a given affordable housing unit. If the municipal ratio is less than 100 percent of true value, then the ratio between true value and assessed value would be applied to the restricted resale price and an appropriate assessment will be struck.

While many aspects of New Jersey affordable housing remain unsettled, assessing affordable housing units is not one of them. By following the requirements of the *Prowitz* decision and using the COAH calculators, affordable housing units within a given municipality can be fairly and properly assessed. ▲

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