THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. 2018-680

Ventas Realty Limited Partnership

v.

City of Dover

BRIEF OF THE APPELLEE/RESPONDENT, CITY OF DOVER

Appeal Pursuant to Supreme Court Rule 7
From the Final Order of the Superior Court of Strafford County in
Docket No. 219-2015-CV-333

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To Be Argued By:
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STATEMENT OF FACTS

In this tax abatement appeal, the superior court was asked to determine whether Ventas Realty Limited Partnership met its burden of demonstrating its real estate located at 307 Plaza Drive in Dover, ("the Property") was assessed as of April 1, 2014 at such a level that Ventas bore a disproportionate share of the city's tax burden. National HealthCare Associates ("NHCA") operates a skilled nursing facility ("Facility") on the Property, and has done so since May 2013. See Petitioner's Property Apprisal ("Dennehy Report") at 34, 46, Confidential Appendix of the Appellant ("Conf. App.") at 41, 53.

The City assessed the Property at $4,308,500. Applying the City's 95.1% equalization ratio, the City's assessment suggests a fair market value of the Property of $4,535,263. Ventas argued that the fair market value of the Property in 2014 was only $1,700,000. See Dennehy Report, Conf. App. at 6. The City countered that its $4,308,500 assessment was fair and proportional, and provided expert testimony and evidence that the Property's fair market value was actually $4,770,000. See Kosich Report, Conf. App. at 90.

The parties both retained appraisers. Their reports differ in the level of detail and analysis provided, with Ventas' appraisal providing minimal analysis and support. The greatest area of disagreement between the experts is the income and expense numbers used in the income capitalization approach. Ventas' appraiser uses only 11 months of actual data, which he then annualizes. See Dennehy Report at 46, Conf. App. at 53. In contrast, the City's expert, who had the advantage of being both a nursing home operator and a licensed nursing home administrator, used the 11 months of actual data that was available, plus the actual numbers for the remainder of 2014 that was made available, as well as market projections to determine an accurate and complete picture of the income and expenses for the Property. See Respondent's Property Appraisal ("Kosich Report") at 127-28, 131, 138-151, Conf. App. at 220-21, 224, 231-244. The parties' effective gross revenue numbers differ only slightly, with the City's expert

actually benefitting Ventas by predicting less revenue than Ventas' appraiser. See Dennehy Report at 49, Conf. App. at 56; Kosich Report at 152, Conf. App. at 245. On the expenses, however, there is a large discrepancy with Ventas' appraiser estimating $800,000 more in expenses then the City's expert. The City's expert, however, performed three additional valuation methods – cost approach, sales comparison approach and discounted cash flow analysis – each of which supports her determination of fair market value, and thus her expenses. See Kosich Report at 88, Conf. App. at 181. Ventas' appraiser performed no additional substantive valuation methods to check or support his valuation.

The trial court heard two days of testimony, following which it issued a 19 page order. Although Ventas frames this appeal as one in which the court "adopted" the city's expert's appraisal, in truth the trial court concluded that "Dennehy's approach on behalf of Ventas does not accurately reflect the overall value of the property based on a forecasted net income the property would have generated on the open market in 2014. Therefore, the court finds that Ventas has not sufficiently proved the property's fair market value under the income capitalization approach, and according has not met its burden of proof to show that it is entitled to an abatement for the 2014 tax year." Order at 19, attached to Brief of the Appellant at 49. See also Order at 17, footnote 10, attached to Brief of the Appellant at 47 ("The court notes that even if it found Kosich's methodology in forecasting nursing expenses to be flawed, Ventas has not met its burden to show that its own forecasted nursing expenses are accurate because it did not conduct any market analysis.").

This decision was supported by the facts and within the sound discretion of the trial court judge and should be affirmed by this Court.

SUMMARY OF ARGUMENT

"Determination of fair market value is an issue of fact." Appeal of Pennichuck Water Works, 160 N.H. 18, 37 (2010). Trial court decisions regarding questions of facts, as well as regarding the admissibility of and weight given to an expert's report and testimony are reviewed under an unsustainable exercise of discretion standard. See, e.g., Cook v. Sullivan, 149 N.H. 774, 780 (2003).

The trial court correct rejected Ventas's conclusion that the fair market value of the property as of April 1, 2014 was $1,700,000 largely because its appraiser, Mr. Dennehy, used actual, rather than market, figures to calculate the property's expenses. This was a proper exercise of the trial court's discretion.

Both parties in this case relied primarily upon the income capitalization method of determining the fair market value, which approach measures the value of property on the basis of the future net income the property could produce. See Rollsworth Tri-City Trust v. City of Somersworth, 126 N.H. 333, 335 (1985). Mr. Dennehy, however, considered less than a single year of actual income and expenses in performing his analysis. While, this Court has, on occasion, indicated that the use of actual rather than market income and expenses is appropriate when undertaking the income capitalization analysis, it has so held only where there is evidence that the actual figures are consistent with the market. See, e.g., Rollsworth, supra, at 337. However, "where the actual income . . . does not reflect the true value of the property . . .the [court] may reject or give little weight to the capitalization of actual net income method." Demoulas v. Town of Salem, 116 N.H. 775, 782 (1976). This is the latter situation.

Ventas argues that "[t]he City produced no comparable property that offered the same mix of services the plaintiff offered." Brief of Appellant at 14. As an initial matter, the city's expert utilized the exact same comparables as did Mr. Dennehy (though Dennehy used them only to support his claim that Ventas's expenses were reasonable, not that they were market expenses). More

importantly, the burden of proof was not on the city to demonstrate anything in this case. Ventas bore the burden of demonstrating that its actual rents were, in fact, comparable to market rents. It failed to do so.

Ventas also argues that the trial court's ruling requires it to "demonstrate that its patient level of care will not change in 2014" and/or to "take patients with less care requirements like it competitors.". Brief of Appellant at 20-21. Of course, what Ventas was actually required to do, and what it failed to do, was to "demonstrate that the property's specific characteristics–in this case, its services–render its ability to generate income at the market level unlikley." Order at 16, attached to Brief of Appellant at 46 (citing Appeal of New Realty Holding Trust, 28 N.H. 795, 800 (1986).

Finally, Ventas argues that the worn condition of the property reduced its value and that the city did not take the condition of the property into account. While, again, the city bore no burden of proof in this case, this allegation is also untrue. The city's expert did, in fact, consider the condition of the property in her analysis.

Ventas also argues that the value of its real estate is reduced due to governmental regulation of its property. Again, this Court has, on occasion, considered the impact of government regulation on the value of real estate. However, it has done so only in situations where the governmental regulations actually affect the value of a utility's property. See, e.g., New England Power Company v. Town of Littleton, 114 N.H. 594 (1974); see also Appeal of PSNH, 170 N.H. 87 (2017).

Ventas simply did not demonstrate that the governmental regulation of its nurses affects the value of its real estate.

Mr. Dennehy's reliance upon only 11 months of actual income and expense figures from May 1, 2013 through March 31, 2014 presented a limited, skewed picture of the Property's income and particularly the expenses, which was not

supported by the law. The trial court properly rejected his conclusion of value, and did not abuse its discretion in so doing; this Court should affirm.

Ventas argues the trial court's decision violated public policy. There is no reference in Ventas's original petition to the superior court alleging any violation of public policy. Likewise, contrary to the representation made in its brief, the issue was not raised in its trial memorandum either. Instead, the issue was raised for the first time in Ventas's Motion for Reconsideration. The city objected to the trial court considering the issue, and the trial court, in fact, did refuse to consider it, in part because it had not been raised. Because the issue was not timely raised, and because the trial court properly exercised its discretion to not consider it, see, e.g., Mountain Valley Mall Associates v. Municipality of Conway, 144 N.H. 642, 654-55 (2000), this Court should likewise refuse to consider it.

Even if the Court does consider the public policy argument, it fails. Essentially, Ventas argues that the trial court's conclusion "requires the facility to either cut staff, possibly below safe levels, or shut its doors." Brief of Appellant at 24. That this is patently untrue. This is a tax abatement case. The value of the property is not dictated by Ventas's choices in paying more than the market value for nursing services. Moreover, by the end of 2014, the facility's operator had *already* reduced expenses by over $322,928, supporting the city's conclusions.

The trial court simply followed the law in dismissing Mr. Dennehy's use of actual rather than market expenses in this case where there was no effort made to demonstrate that the actual expenses were comparable to market expenses. There was no violation of public policy in it so doing, and there will be no disasterous impact on Ventas's operations as a result. This Court should therefore reject this argument.

Petitioner objects to the court's consideration of two pieces of data: the transfer tax stamp from the conveyance of the property in 2015 and the city's expert's use of the Facility's income and expenses incurred through December, 2014. Neither is a valid objection.

When Ventas transferred the Property in August 2015 to CCP Dover 0591 LLC, it represented to the N.H. Department of Revenue ("DRA") that the "price or consideration" for the transfer was $4,308,500. See Dennehy Report at Exhibit 1 and 34, Conf. App. at 81 and 41. In his report, Mr. Dennehy claimed that this was "merely an allocation with no basis in market relevance." This is not a correct statement. The declaration of price or consideration made on the DRA forms is for purposes of calculating the transfer tax, and it is "prima facie evidence of the price or consideration paid for the real estate." RSA 78-B:10, II (emphasis added).

Mr. Dennehy also testified at trial, without any legal support, that when doing a retrospective appraisal after the date of valuation, it is only appropriate to look at income and expenses as of the date of valuation and back; it is not appropriate to look forward as you would for a "contemporary date appraisal." This is not the law in New Hampshire. The city's expert's use of data from after April 1, 2014 was completely appropriate and necessary in undertaking the income capitalization analysis, and Mr. Dennehy's failure to do so because he does not know how to make certain specific adjustments necessary for projections, see Transcript of Bench Trial, Day 1 at 33, is not justified. The trial court properly rejected Dennehy's conclusions, and this Court should affirm.

The City's assessment was lawful and proportionate. Ventas failed to carry its burden to demonstrate that it was not so, and its appeal was properly denied. No credible argument has been made that the trial court abused its discretion in reaching this largely factual conclusion, and this Court should therefore deny this appeal as well.

ARGUMENT

I. STANDARD OF REVIEW

As Ventas notes in its brief, "[d]etermination of fair market value is an issue of fact." Appeal of Pennichuck Water Works, 160 N.H. 18, 37 (2010). Trial court decisions regarding questions of facts, as well as regarding the admissibility of and weight given to an expert's report and testimony are reviewed under an unsustainable exercise of discretion standard. See, e.g., Cook v. Sullivan, 149 N.H. 774, 780 (2003).

II. THE SUPERIOR COURT CORRECTLY REJECTED PETITIONER'S USE OF ACTUAL, RATHER THAN MARKET, EXPENSES IN ITS INCOME CAPITALIZATION METHOD OF DETERMINING VALUE

The trial court rejected Dennehy's conclusion that the fair market value of the property as of April 1, 2014 was $1,700,000 largely because he used actual, rather than market, figures to calculate the property's expenses. This was a proper exercise of the trial court's discretion.

Both parties in this case relied primarily upon the income capitalization method of determining the fair market value.

> The income capitalization approach measures the present value of property on the basis of the future net income the property could produce for the owner. The net income is the rent the property would generate on the open market, less the normal and usual costs of operation. This figure is then capitalized to determine present worth.

Rollsworth Tri-City Trust v. City of Somersworth, 126 N.H. 333, 335 (1985); see also Dennehy Report at 45, Conf. App. at 52 ("The potential gross income is obtained from an estimate of the market rent appropriate for the property.").

Mr. Dennehy, however, considered less than a single year of actual income and expenses in performing his analysis. See Dennehy Report at 55, Conf. App. at 62. Ventas argues that this was proper because of the impact of governmental

regulations on the property, because the property is "unique," and because this Court has previously held that the use of actual expenses is not always inappropriate.

It is true that this Court has, on occasion, indicated that the use of actual rather than market income and expenses is appropriate when undertaking the income capitalization analysis. However, it has so held only where there is evidence that the actual figures are consistent with the market. See, e.g., Rollsworth, supra, at 337. However, "where the actual income . . . does not reflect the true value of the property . . .the [court] may reject or give little weight to the capitalization of actual net income method." Demoulas v. Town of Salem, 116 N.H. 775, 782 (1976); see also Coliseum Vickerry Realty Co. Trust v. City of Nashua, 126 N.H. 368,370 (1985)("Since market rents in the instant case were higher than the actual rental income, the master appropriately used these rents in valuing the property.").

Ventas argues that "[t]he City produced no comparable property that offered the same mix of services the plaintiff offered." Brief of Appellant at 14. As an initial matter, the city's expert utilized the exact same comparables as did Mr. Dennehy (though Dennehy used them only to support his claim that Ventas's expenses were reasonable, not that they were market expenses). More importantly, the burden of proof was not on the city to demonstrate anything in this case. Instead, Ventas bore the burden of demonstrating that its actual rents were, in fact, comparable to market rents. It failed to do so and nothing in Royal Gardens Co. v. City of Concord, 114 N.H. 668 (1974) excuses this failure. Royal Gardens involved the assessment of a housing project funded by the National Housing Act, which funding required it to charge below market rents and limited the amount of return that its investors could earn. This Court held that under the "unique facts of [that] case," the court could consider the impact of the restrictions. However, there are no such restrictions in this case.

Ventas also argues that the trial court's ruling requires it to "demonstrate that its patient level of care will not change in 2014" and/or to "take patients with less care requirements like it competitors.". Brief of Appellant at 20-21. These arguments are, of course, baseless. What Ventas was required to do, and what it failed to do, was to "demonstrate that the property's specific characteristics–in this case, its services–render its ability to generate income at the market level unlikley." Order at 16, attached to Brief of Appellant at 46 (citing Appeal of New Realty Holding Trust, 28 N.H. 795, 800 (1986).

Finally, Ventas argues that the worn condition of the property reduced its value and that the city did not take the condition of the property into account. While, again, the city bore no burden of proof in this case, this allegation is also untrue. Ms. Kosich performed a "Level C Market Analysis," which is an "analysis of the competitive facilities [and] is the keystone for the valuation in that the conclusions are integral to the highest and best use analysis and the appropriate sections of the income capitalization and sales comparison approaches. The location and physical plant value factors are used with other factors to determine the comparability score; this information is then used to forecast private pay rates, all of which is presented in a "Market Analysis Conclusion". See Kosich Report at 62, 68-70, and 84, Conf. App. at 155, 161-63, and 177. She gave the Property the lowest physical plant value of all the comparables – a "3" out of "10". See Kosich Report at 62, Conf. App. at 155, which resulted in a *deduction* in the projected "Average Private-Pay Rate" for the subject facility. Moreover, Ms. Kosich's analysis did properly and adequately account for the physical condition of the Property because the condition is reflected in the reduced occupancy rates and payor mix used in Ms. Kosich's calculations, which hasda direct effect on revenues. See Kosich Report at 39, 68,110, Conf. App. at 132, 161, 203. Finally, Ms. Kosich performed a detailed analysis to determine the effective age of the Facility, giving the Facility the lowest score for external obsolescence while noting there was not anything *structurally* wrong with the facility, which is

supported by the fact that the CON was not for structural repairs but was rather for upgrades and aesthetics. See Dennehy Report at 45, Conf. App. at 52; and Kosich Report at 41-42, Conf. App. at 134-35. It is worth noting that Mr. Dennehy undertook no analysis regarding the condition of the facility.

Ventas's use of actual, rather than market rents was unsupported by the evidence in this case because it failed to demonstrate that the actual rents were market rents, instead arguing that the actual rents were "reasonable" and claiming that that was sufficient. Likewise, its argument regarding governmental regulation is misplaced. In the cases when this Court has considered the impact of government regulation, it has done so only in situations where the governmental regulations actually affect the value of the property. For example, in New England Power Company v. Town of Littleton, 114 N.H. 594 (1974), this Court held that a provision of a license which allowed the United States Government to acquire the property upon two years' notice at a given price, "would always be a consideration in the acquisition of any property." Id. at 604. It went on to note that other restrictions, such as restrictions on the use of the property during times of flooding, did not impact the value of the property. Consistent with that holding, in Appeal of PSNH, 170 N.H. 87 (2017), this Court stated:

> merely identifying the presence of regulation that may impact the market value of property is insufficient. [Taxpayer] needed to prove, with sufficient probative evidence, that the specific utility regulatory environment in which it operates impacts the market value of its property to such a degree as to make the challenged municipal assessments disproportional.

Id. at 95. Ventas simply did not meet this burden in this case.

Here, the regulations at issue are of the nurses, not the property. And those regulations do not dictate in any way the cost of the nurses. The market dictates that cost. Ventas made no effort to demonstrate that the actual cost of

the regulated nurses are comparable to the market cost of those same nurses. And in fact, the subsequent reduction in those expenses implemented by NHCA in 2014 demonstrates clearly that those actual nursing expenses did not reflect the market. See Kosich Report at 172, Conf. App. at 265.

Mr. Dennehy's reliance upon only 11 months of actual income and expense figures from May 1, 2013 through March 31, 2014 presented a limited, skewed picture of the Property's income and particularly of the expenses, which was not supported by the law. The trial court properly rejected his conclusion of value, and did not abuse its discretion in so doing; this Court should affirm.

III. PETITIONER'S PUBLIC POLICY ARGUMENT IS NOT ONLY MISPLACED, BUT WAS NOT RAISED IN A TIMELY MANNER AND THEREFORE THIS COURT SHOULD NOT CONSIDER IT

There is no reference in Ventas's original petition to the superior court alleging any violation of public policy. Likewise, contrary to the representation made in its brief, the issue was not raised in its trial memorandum either. See Plaintiff's Trial Memorandum at 7-9, App. at 9-11. Rather, the issue was raised for the first time in Ventas's Motion for Reconsideration at 6-7, App. at 26-27. The city objected to the trial court considering the issue, see City's Objection to Motion for Reconsideration at ¶3, App. at 31, and the trial court, in fact, did refuse to consider it. See Order on Motion for Reconsideration, attached to Brief of Appellant at 51 ("[I]n denying reconsideration, the court adopts the reasoning set forth in paragraphs 3 . . .of the City's objection."). Because the issue was not timely raised, and because the trial court properly exercised its discretion to not consider it, see, e.g., Mountain Valley Mall Associates v. Municipality of Conway, 144 N.H. 642, 654-55 (2000), this Court should likewise refuse to consider it.

Even if the Court does consider the argument, it fails upon even the most cursory examination. Essentially, Ventas argues that the trial court's conclusion that Mr. Dennehy's use of actual rather than market expenses was inappropriate in undertaking the income capitalization approach to valuation "requires the

facility to either cut staff, possibly below safe levels, or shut its doors." Brief of Appellant at 24. That this is patently untrue. This is a tax abatement case. The value of the property is not dictated by Ventas's choices in paying more than the market value for nursing services. Moreover, by the end of 2014, after NHCA had managed and operated the facility for only a little over a year, NHCA had *already* reduced expenses by over $322,928. See Kosich Report at 172, Conf. App. at 265. And in fact, the comparables show that, particularly with a new operator, expenses can be, and are expected to be, tightened up and cut further. See Kosich Report at 135, Conf. App. at 228.

The trial court simply followed the law in dismissing Mr. Dennehy's use of actual rather than market expenses in this case where there was no effort made to demonstrate that the actual expenses were comparable to market expenses. There was no violation of public policy in it so doing, and there will be no cataclysmic impact on Ventas's operations as a result. This Court should therefore reject this argument.

IV. THE CONSIDERATION OF POST ASSESSMENT DATE DATA WAS APPROPRIATE

Petitioner objects to the court's consideration of two pieces of data: the transfer tax stamp from the conveyance of the property in 2015 and the city's expert's use of the Facility's income and expenses incurred through December, 2014. Neither is a valid objection.

A. The Consideration of the Transfer Tax Stamp Was Appropriate

When Ventas transferred the Property in August 2015 to CCP Dover 0591 LLC, it represented to the N.H. Department of Revenue ("DRA") that the "price or consideration" for the transfer was $4,308,500. See Dennehy Report at Exhibit 1 and 34, Conf. App. at 81 and 41. In his report, Mr. Dennehy claimed that "the compensation of $4,308,500 for this transaction, which is support by the deed's real estate transfer tax stamp[,] . . . is merely an allocation with no basis in market relevance." See Dennehy Report at 34, Conf. App. at 41. This is not a correct

statement, and apparently Mr. Dennehy did not notice the obvious fact that Ventas did not use some unknown allocation method at all, but rather adopted the City's assessment value of the Property in reporting the transaction to the DRA.

Pursuant to RSA 78-B:1, I(b): "The rate of the tax is $.75 per $100, or fractional part thereof, of the price or consideration for such sale, grant, or transfer[.]" "'Price or consideration' means the amount of money . . . which is given in exchange for real estate, and measured at a time immediately after the transfer of real estate." RSA 78-B:1-a, IV. "'Sale, granting and transfer' means every contractual transfer of real estate, or interest in real estate from a person or entity to another person or entity, whether or not either person or entity is controlled directly or indirectly by the other person or entity in the transfer." RSA 78-B:1-a, V. The declaration of price or consideration made on the DRA forms is for purposes of calculating the transfer tax, and it is "prima facie evidence of the price or consideration paid for the real estate." RSA 78-B:10, II (emphasis added).

While the City's expert also noted in her report that the 2015 transfer from Ventas to CCP was not an arms lengths transaction and does not reflect market value, see Kosich Report at 5, Conf. App. at 98; Ventas carries the burden in this tax abatement appeal. And regardless of whether the $4,308,500 reported to the DRA is an accurate depiction of market value, it still can be considered by the Court as *evidence of value*. "At some point, for the proper and efficient administration of property tax assessment, assessors and other public officials, including the department of revenue administration in its responsibility for equalizing values throughout the state, must be able to rely upon the stated consideration prices, indicated by the transfer tax stamps[.]" Gary and Andrea Atturio v. Town of Thornton, No. 21276-04PT (Oct. 12, 2007 BTLA).

B. The Use of Income and Expenses for All of 2014 Was Appropriate

Mr. Dennehy testified at trial, without any legal support, that when doing a retrospective appraisal after the date of valuation, it is only appropriate to look at income and expenses as of the date of valuation and back; it is not appropriate to look forward as you would for a "contemporary date appraisal." See Transcript of Bench Trial, Day 1 at 13. This is not the law in New Hampshire. See, e.g., Pleasant View Retirement v. City of Concord, No. 25916-10PT (Sept. 9, 2013 BTLA) ("The board reviewed the historical expenses and trends in detail, in considering its estimated stabilized expenses[.]" (Emphasis added)); Varsity Durham v. Town of Durham, Nos. 24680-08PT, 25378-09PT (March 9, 2012 BTLA) (rejecting taxpayer's appraisal where appraisal "placed exclusive reliance on the actual financial results for one year for the portfolio purchased by the Taxpayer, rather than estimating stabilized market rental income and expenses on the Property, which would have resulted in a credible estimate of market value using the income approach").

Ms. Kosich followed the law, including the actual historical and full-year 2014 numbers for the Facility, comparables from the market, and a one-year projection through March 31, 2015 in calculating expenses. See Kosich Report at 131, 132, 135, Conf. App. at 224, 225, 228. Including all these sources of data is *necessary* for a full, accurate picture of expenses for the Facility. Ms. Kosich's discussion and analysis of these categories of expenses in her report demonstrate the problem with Mr. Dennehy using just 11 months of historical data to support his opinion of value. See Kosich Report at 141-47, Conf. App. at 234-240. By using such a limited scope of data, from May 1, 2013 through March 31, 2014, particularly when a new operator/manager (NHCA) had just started in May 2013 and was likely to – and in fact did – tighten up expenses, Mr. Dennehy presents a false picture of the Facility's expenses. Mr. Dennehy's expense analysis is further called into question by the fact that he recognizes in his own report that new owners "frequently also forecast sizeable reductions in operating

expenses." While NHCA is the operator and tenant, the same expectation applies. And NHCA bore out this expectation, by actually reducing expenses by over $300,000 in just the first year it operated the Facility (from 2013 to 2014). See Kosich Report at 129, Conf. App. at 222.

Looking closely at Ms. Kosich's nursing and ancillaries forecasts, it shows that her "Forecasted" expenses (under the "$ PRD" – "per resident day" column) are actually in the middle of the historical expenses and the comparables. See Kosich Report at 142-44, Conf. App. at 235-37. Ms. Kosich's report also shows that the Facility's nursing expenses decreased from 2013 to 2014 under the new operator.

The city's expert's use of data from after April 1, 2014 was completely appropriate and necessary in undertaking the income capitalization analysis, and Mr. Dennehy's failure to do so because he does not know how to make certain specific adjustments necessary for projections, see Transcript of Bench Trial, Day 1 at 33, is not justified. The trial court properly rejected Dennehy's conclusions, and this Court should affirm.

CONCLUSION

The City's $4,308,500 assessment, representing a fair market value of $4,535,263 was lawful and proportionate. Ventas failed to carry its burden to demonstrate that it was not so, and its appeal was properly denied. No credible argument has been made that the trial court abused its discretion in reaching this largely factual conclusion, and this Court should therefore deny this appeal as well.

REQUEST FOR ORAL ARGUMENT

The City of Dover does not believe oral argument is necessary to resolve the issues before the Court; however, should the Court determine that such argument would be helpful, the City of Dover requests oral argument not to exceed 15 minutes, to be presented by Walter L. Mitchell, Esquire.

CERTIFICATIONS

This document complies with the 9,500 word limit established by the Court's rules. It contains 4,963 words, exclusive of pages containing the table of contents, tables of citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters.

I have forwarded copies of the foregoing brief to Kevin P. Rauseo, Esquire and Andrew J. Piela, Esquire via the Court's electronic filing system's electronic service.

Respectfully submitted,

CITY OF DOVER

By Its Attorneys

MITCHELL MUNICIPAL GROUP P.A.

Date: July 15, 2019 By: */s/ Laura Spector-Morgan*

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