STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: May 2, 2013)

SPRINGFIELD ARMOURY L.P.	:	
	:	
v.	:	
	:	**C.A. No. KC 2010-0038**
PATRICIA PICARD, in her capacity as ASSESSOR OF TAXES FOR THE TOWN OF COVENTRY	:	

DECISION

K. RODGERS, J. This matter is before the Court on Springfield Armoury L.P.'s (Springfield Armoury or Plaintiff) petition for relief, pursuant to G.L. 1956 § 44-5-26, from the Town of Coventry Board of Assessment Review's (Board) decision declining to assess a tax on Plaintiff's property at a rate of eight percent (8%) of the property's gross rental income for the previous calendar year, in accordance with G.L. 1956 § 44-5-13.11. Whether § 44-5-13.11 applies to Plaintiff requires this Court to tread into the complex world of the United States Department of Housing and Urban Development (HUD).

For the reasons set forth herein, this Court finds that § 44-5-13.11 does apply to the Plaintiff's property and that the Town, through its Tax Assessor and Board, imposed an illegal tax upon the Plaintiff. Accordingly, judgment shall enter for Plaintiff.

I

Facts and Travel

Having reviewed the evidence presented by both parties at a jury-waived trial, the Court makes the following findings of fact, derived largely from the parties' Joint Statement of Undisputed Facts and Joint List of Undisputed Exhibits (Joint Exs.).

This case arises from Plaintiff's rehabilitation of real property located at 1500 Nooseneck Hill Road and 20 Woodland Drive in Coventry, Rhode Island. Joint Statement of Undisputed Facts ¶ 1; Joint Ex. 1. These parcels, collectively known as Woodland Manor, are comprised of 276 residential units in ten multifamily buildings, all of which are located on Assessor's Plat 19, Lots 19 and 17, respectively. Joint Statement of Undisputed Facts ¶¶ 1-2; Joint Exs. 1-2. At trial, Andrew Burnes (Burnes), the managing general partner of the limited partnership that owns Woodland Manor, testified that of the 276 residential units in Woodland Manor, 180 units are slated for what is generally referred to as Section 8 housing, "Housing Assistance Payments Program," codified at 24 C.F.R. §§ 883.101 et seq. See Joint Ex. 32; see also Joint Ex. 9, at 4 (identifying 207 of the 276 as being Section 8 units); Joint Ex. 21 (HUD inspector identifying only 150 dwelling units in 9 buildings).[1]

The buildings on Lots 19 and 17 had been issued Certificates of Occupancy by the Town of Coventry in 1980 and 1981; however, as of mid-2005, the buildings were in need of significant rehabilitation. See Joint Statement of Undisputed Facts ¶¶ 2, 10; Joint Exs. 2, 10. To rehabilitate Woodland Manor, Plaintiff received a loan in the amount of $19,942,600 from Suburban Mortgage Associates, Inc. (Suburban Mortgage) on January 26, 2006, secured by a Mortgage Deed. See Joint Statement of Undisputed Facts ¶¶ 3-4; Joint Exs. 3-4. That loan had been insured by a loan commitment from HUD on October 31, 2005, pursuant to § 221(d)(4) of the National Housing Act, codified at 12 U.S.C. §§ 1701 et seq. Joint Statement of Undisputed Facts ¶ 2; Joint Ex. 2. As a condition of this loan insurance, Plaintiff and HUD executed Form HUD-92466 (Regulatory Agreement for Multifamily Housing Projects). Joint Statement of Undisputed Facts ¶ 5; Joint Ex. 5. That Agreement included a covenant that Plaintiff would be

[1] The specific number of Section 8 units is not pertinent to the issues before and the findings by this Court.

required to "make dwelling accommodation and services available to occupants at charges not exceeding those established in accordance with a rental schedule approved in writing" by HUD. Joint Statement of Undisputed Facts ¶ 5; Joint Ex. 5.

From January 26 to December 17, 2006, construction on the various buildings in Woodland Manor was ongoing. Joint Statement of Undisputed Facts ¶ 8; Joint Ex. 8. Burnes testified that tenants in the units were not relocated during construction, although some units became vacant between tenancies and not for the express purpose of allowing construction to proceed in such units. Although the construction performed on or within each building differed, the construction throughout Woodland Manor generally included removal and/or replacement of flooring, cabinetry, appliances, entrance doors, roofing, fire alarm systems, exterior trim, and deteriorated exterior insulation and finish systems. Joint Exs. 6, 25. The construction was completed and Plaintiff submitted Form HUD-92330 (Mortgagor's Certificate of Actual Cost) to HUD dated January 15, 2007, in which it certified that the actual costs for this construction was $5,125,037. Joint Statement of Undisputed Facts ¶ 8; Joint Ex. 8.

On March 28, 2007, the Director of HUD's Rhode Island Multifamily Program Center executed Form HUD-92580 (Maximum Insurable Mortgage), indicating that HUD would insure the loan to Plaintiff from Suburban Mortgage on the Woodland Manor project up to $19,942,600. Joint Statement of Undisputed Facts ¶ 22; Joint Ex. 22.

A HUD Inspector subsequently conducted a site visit to Woodland Manor on April 12, 2007, and filed his HUD Representative's Trip Report (Multifamily) confirming that the project was complete except for minor items. Joint Statement of Undisputed Facts ¶ 21; Joint Ex. 21.

On August 13, 2008, at Plaintiff's request, the Town of Coventry issued Certificates of Occupancy for the various buildings in Woodland Manor. Joint Statement of Undisputed Facts

¶ 10; Joint Ex. 10. On January 13, 2009, Plaintiff executed its Annual Return and filed the same with the Town of Coventry's Tax Assessor seeking to invoke the provisions of § 44-5-13.11. Joint Statement of Undisputed Facts ¶ 11; Joint Ex. 11. That statute provides as follows:

> Any residential property that has been issued an occupancy permit on or after January 1, 1995, after substantial rehabilitation as defined by the U.S. Department of Housing and Urban Development and is encumbered by a covenant recorded in the land records in favor of a governmental unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged to tenants of the property or the incomes of the occupants of the property, is subject to a tax that equals eight percent (8%) of the property's previous years' gross scheduled rental income or a lesser percentage as determined by each municipality.

§ 44-5-13.11 (emphasis added).

It is undisputed that assessment of Woodland Manor's taxes under § 44-5-13.11 would have significantly decreased Plaintiff's tax burden. Under § 44-5-13.11, Plaintiff's tax burden would be calculated as 8% of Woodland Manor's gross rental income for 2008, or $250,247, see Joint Ex. 11; however, the amount owed by Plaintiff would have increased to $338,612.49 if the statute was inapplicable. Joint Ex. 34.[2]

On August 24, 2009, Defendant Patricia Picard (Picard), in her capacity as the Town of Coventry's Tax Assessor, denied Plaintiff's request made in its Annual Return and concluded that § 44-5-13.11 was inapplicable to Woodland Manor. Joint Statement of Undisputed Facts ¶¶ 13, 26; Joint Ex. 13. In reaching her conclusion, Picard employed a definition of "substantial rehabilitation" from HUD's Office of Community Planning and Development's online Glossary of Terms, which required such rehabilitation to "involve[] costs in excess of 75 percent of the

[2] Exhibit 34 reflects the real estate tax assessments for Lots 19 and 17, as well as personal property tax assessments for each parcel. Excluding the personal property taxes associated with each parcel, the 2009 real estate tax for Lot 19 is $161,438.27, and for Lot 17 is $227,174.22, for a total real estate tax for Woodland Manor of $338,612.49.

value of the building after rehabilitation." Joint Ex. 13. Picard testified at trial that she located this definition through a search on Google for HUD definitions. She further testified that, at the time of trial, she had only received one other formal application for the 8% tax, and that was applied to a new construction project where "substantial rehabilitation" was not an issue. She had received another general inquiry into the applicability of § 44-5-13.11, but no formal application for the 8% tax was ever filed as it related to an existing, renovated structure. Picard found that the total cost of renovations completed in 2005[3] for Lot 19 was $113,800, the post-renovation value of the buildings on Lot 19 was $5,000,452, the total cost of interior renovations completed in 2005 for Lot 17 was $1,752,463, and the post-renovation value of the buildings on Lot 17 was $8,320,160. Id. Picard concluded that the renovations to neither of the parcels in Woodland Manor exceeded seventy-five percent (75%) of the total value of the buildings on the subject parcel and, therefore, neither parcel was "substantially rehabilitated" as required under § 44-5-13.11. Id.

Plaintiff timely appealed Picard's denial to the Board of Assessment Review. Joint Statement of Undisputed Facts ¶ 14; Joint Ex. 14. In a letter dated December 16, 2009, the Board informed Plaintiff that its appeal had been denied by a vote of the Board at a meeting held one day earlier. Joint Statement of Undisputed Facts ¶ 15; Joint Ex. 15. At that meeting, the Board indicated that it reviewed additional information provided by the Town's Finance Director, Warren West, which revealed that the "minimal work" for which Plaintiff had received building permits did not require issuance of an occupancy permit. Joint Ex. 15. Furthermore, the letter reveals that Mr. West had advised the Tax Assessor that two separate HUD definitions

[3] Neither party substantiated or questioned the propriety of this 2005 completion date in the course of trial, although other evidence demonstrated that the renovations were completed in 2006. See, e.g., Joint Statement of Undisputed Facts ¶ 8; Joint Ex. 8. Notwithstanding, this Court accepts the monetary figures relied upon by Picard as undisputed facts.

of "substantial rehabilitation" existed, and that neither definition had been satisfied by Plaintiff's construction at Woodland Manor. Id. The Board's December 16, 2009 letter gives no indication as to where those two alleged HUD definitions may be found or what they say. Id.

On January 11, 2010, Plaintiff timely appealed to this Court by filing a petition seeking relief on two grounds: (1) the illegality of the assessment in violation of § 44-5-13.11, and (2) the tax assessed is in excess of the property's full and fair cash value. Pet. ¶¶ 2, 3. Plaintiff has timely appealed to this Court only with respect to taxes assessed in 2009. Joint Statement of Undisputed Facts ¶ 27. Having failed to present any evidence with respect to the second basis for appeal to this Court, the Court considers only the first ground for appeal as it relates to Plaintiff's 2009 tax assessment.

II

Standard of Review

In a non-jury trial, the trial justice is responsible for deciding both issues of fact and questions of law. Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). As such, the trial justice "weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences." Id. However, "a trial justice need not engage in extensive analysis and discussion of all the evidence when rendering a decision in a non-jury trial; indeed, [e]ven brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case." Cathay Cathay, Inc. v. Vindalu, LLC, 962 A.2d 740, 747 (R.I. 2009) (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998) (quotation omitted)).

It is well-established that the interpretation of a statute is a question of law. See Palazzolo v. State ex rel. Tavares, 746 A.2d 707, 711 (R.I. 2000). "In matters of statutory interpretation our ultimate goal is to give effect to the purpose of the act as intended by the Legislature." Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001) (citation omitted). In attempting

to accomplish this goal, it is the "plain statutory language [that] is the best indicator of legislative intent." State v. Santos, 870 A.2d 1029, 1032 (R.I. 2005). Indeed, "[i]t is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Ryan v. City of Providence, 11 A.3d 68, 70-71 (R.I. 2011) (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996) (quotation omitted)). Only if the language of a statute is found to be ambiguous does the Court "engage in a more elaborate statutory construction process" guided by the canons of statutory interpretation. Chambers v. Ormiston, 935 A.2d 956, 960 (R.I. 2007) (citation omitted). A statute is ambiguous "when the language of [the] statute is not susceptible to literal interpretation." New England Dev., LLC v. Berg, 913 A.2d 363, 369 (R.I. 2007) (citing Ret. Bd. of Employees' Ret. Sys. of R.I. v. DiPrete, 845 A.2d 270, 279 (R.I. 2006)); see also LaPlante v. Honda N. Am., Inc., 697 A.2d 625, 628 (R.I. 1997) (finding a statute ambiguous where "it is subject to two completely different, although initially plausible interpretations") (quotation omitted).

In interpreting an ambiguous statute, it has been held that a court should give deference to the statutory interpretation of an agency that "has been charged with administering and enforcing" the statute, "provided that the agency's construction is neither clearly erroneous nor unauthorized." Arnold v. R.I. Dept. of Labor & Training Bd. of Review, 822 A.2d 164, 169 (R.I. 2003) (citing In re Lallo, 768 A.2d 921, 926 (R.I. 2001)). However, the "ultimate interpretation of an ambiguous statute . . . is grounded in policy considerations and [this Court] will not apply a statute in a manner that will defeat its underlying purpose." Id. (citing Pier House Inn, Inc. v. 421 Corp., 812 A.2d 799, 804 (R.I. 2002)).

III

Analysis

The issue presently before this Court turns on an analysis of § 44-5-13.11. The plain language of § 44-5-13.11 requires three elements to be satisfied in order for this statute to apply: (1) issuance of an occupancy permit on or after January 1, 1995; (2) substantial rehabilitation of a residential property, as defined by HUD; and (3) encumbrance of the property by an appropriate covenant recorded in the land evidence records. See § 44-5-13.11. The third element is not in dispute. This Court will, however, address each of the first two elements *seriatim*.

A

Certificates of Occupancy

Defendant maintains that Plaintiff's minimal rehabilitation of the property did not require issuance of any occupancy permit and, therefore, Plaintiff fails to satisfy the first prong of § 44-5-3.11. Plaintiff disagrees. The first prong of § 44-5-13.11 specifically states that the reduced tax rate is applicable only to "residential property that has been issued an occupancy permit on or after January 1, 1995." § 44-5-13.11.

Various state statutory provisions identify when an occupancy permit is required. For instance, certificates of occupancy are required for new buildings, see § 23-27.3-120.1, as well as in the event of certain enumerated alterations to existing buildings, see § 23-27.3-120.2, or changes in the use of a building. See § 23-27.3-120.4. Here, Defendant contends that Plaintiff's work was so minimal and cosmetic in nature that no occupancy permit was required. Further, Defendant asserts that Plaintiff's rehabilitation does not fall within the scope of § 23-27.3-120.2 because there was no evidence that the building was ever unoccupied. That statute provides, in

pertinent part, that "[n]o building or structure subsequently enlarged, extended, or altered . . . shall be occupied or used until the certificate has been issued by the building official." § 23-27.3-120.2.

Defendant's arguments that the first prong of § 44-5-13.11 was not satisfied fail for two reasons. First, a separate statute, § 23-27.3-120.3, provides that certificates of use or occupancy shall be issued "[u]pon written request from the owner of an existing building . . . provided there are no violations of law or orders of the building official or the fire official pending, and it is established after inspection and investigation that the alleged use of the building has heretofore existed." Pursuant to § 23-27.3-120.3, occupants are not required to vacate existing buildings,[4] and there is no requirement that there be recent substantial alterations to the property. Second, there is no dispute that occupancy permits were actually issued by the building official upon Plaintiff's request.

In analyzing statutory language, this Court is bound to "interpret the statute literally and must give the words of the statute their plain and ordinary meanings" when the language is clear and unambiguous. Ryan, 11 A.3d at 70-71 (quoting Accent Store Design, 674 A.2d at 1226 (quotation omitted)). Here, the first prong of § 44-5-13.11 requires that the "residential property . . . has been issued an occupancy permit on or after January 1, 1995." This language is clear and unambiguous in that it requires only that an occupancy permit has been issued on or after a certain date. The statute does not demand consideration of whether the circumstances required that an occupancy permit be issued under a specific statute or ordinance, but rather just that the occupancy permit was issued. Accordingly, this Court finds that the first requirement of § 44-5-

[4] Sec. 23-27.3-120.3 provides that "[n]othing in this [State Building Code] shall require the removal, alteration, or abandonment of, or prevent the continuance of the use and occupancy of, a lawfully existing building, unless the use is deemed to endanger public safety and welfare." Id.

13.11 was satisfied when the Town of Coventry's building official issued Certificates of Occupancy upon Plaintiff's request in August 2008.

B

Defining Substantial Rehabilitation

Having determined that both the first and third prongs of the statute have been satisfied, this Court now considers whether Plaintiff's work on the subject property constituted "substantial rehabilitation as defined by the U.S. Department of Housing and Urban Development." § 44-5-13.11. The statute fails to specify which of the several different HUD definitions of "substantial rehabilitation" applies in this case, thus leading to an ambiguity in the statute. See New England Dev., LLC, 913 A.2d at 369 (citation omitted) (noting that a statute is ambiguous "when the language of [the] statute is not susceptible to literal interpretation"); see also LaPlante, 697 A.2d at 628 (finding a statute ambiguous when the statute "is subject to two completely different, although initially plausible interpretations") (quotation omitted).

In her Post-Trial Memorandum, Defendant states that the definition of "substantial rehabilitation" used by the Tax Assessor derives from HUD's Office of Community Planning and Development's online Glossary of Terms,[5] as well as a regulatory provision entitled "Housing Opportunities for Persons with AIDS," codified at 24 C.F.R. § 574.3 (2012). See Def.'s Post-Trial Mem. at 5-6; see also Joint Exs. 30-31. These two definitions are identical: "Substantial rehabilitation means rehabilitation that involves costs in excess of 75 percent of the value of the building after rehabilitation." Joint Ex. 30, at 8; 24 C.F.R. § 574.3. Additionally, that definition is also similar, although not identical, to the definition of "substantial alteration"

[5]In addition to being introduced at trial as Joint Ex. 30, the Glossary of HUD's Community and Planning Development Terms can be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/glossary.

found in a separate regulatory provision entitled "Alterations of existing housing facilities." See 24 C.F.R. § 8.23 (2012) (defining substantial alteration as "alterations . . . undertaken to a project . . . [where] the cost of the alterations is 75 percent or more of the replacement cost of the completed facility").

Plaintiff, on the other hand, asserts that the definitions of "substantial rehabilitation" found in both the "HUD Handbook 4560.1 – Mortgage Insurance for Multifamily Moderate Income Housing Project" and the "HUD Handbook 4460.1 – Architectural Analysis and Inspections for Project Mortgage Insurance" should apply. Plaintiff's preferred definition states, in pertinent part:

> A. Substantial rehabilitation proposals must meet one of the following criteria:
>
> 1. The cost of repairs, replacements, and improvements exceeds the greater of:
>
> a. 15 percent of the total estimated replacement cost of the project, or
>
> b. $6,500 per dwelling unit (adjusted by the applicable high cost factor).
>
> or
>
> 2. Two or more major building components are being substantially replaced. The term "major building component" includes: roof structures; ceiling, wall or floor structures; foundations; plumbing system; heating and air conditioning system; or electrical system.

HUD Handbook 4560.1, ch. 2, ¶ 2-3. The definition found in HUD Handbook 4460.1 is essentially the same, although the definition's exact wording and formatting contains minor, non-substantive differences.[6] Thus, the HUD Handbook definitions require that changes to the

[6] The text of that definition states, in pertinent part:

> A. Substantial Rehabilitation. Required repairs, replacements, and improvements:
>
> 1. Involve the replacement of two or more major building components or,

property meet a significantly lower threshold relative to the total value of the building—fifteen percent (15%) here, as opposed to seventy-five percent (75%) under the Tax Assessor's chosen definition.

Due to the statute's ambiguity and the conflicting definitions presented by the parties, this Court is tasked with engaging in statutory construction "in a manner that will [not] defeat [the statute's] underlying purpose." Arnold, 822 A.2d at 169 (citing Pier House Inn, Inc., 812 A.2d at 804). Reviewing § 44-5-13.11, entitled "Qualifying low-income housing – Assessment and taxation," in its entirety, it is evident that the purpose of the statute is to encourage private entities to rehabilitate property that will ultimately provide low-income housing options. See § 44-5-13.11 (requiring that the property be "encumbered by a covenant recorded in the land records in favor of a governmental unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged to tenants of the property or the incomes of the occupants of the property"). This goal mirrors the goal of Congress as reflected in 12 U.S.C. § 1715l, entitled "Housing for moderate income and displaced families," which provides for the HUD mortgage insurance program that was utilized by Plaintiff in its rehabilitation of Woodland Manor.[7] See 12 U.S.C. § 1715l(a) (noting that "[t]his section is designed to assist private industry in providing housing for low and moderate income families

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> 2. Cost of which exceeds either:
>
> a. 15 percent (exclusive of any soft costs) of the property's replacement cost (fair market value) after completion of all required repairs, replacements, and improvements.
>
> or
>
> b. $6,500 per dwelling unit (adjusted by the Field Office's authorized high cost percentage)[.]

HUD Handbook 4460.1, ch. 4, ¶ 4-2.

[7] More specifically, Petitioner's rehabilitation of Woodland Manor was approved under Section 224(d)(4) of the National Housing Act, as codified at 12 U.S.C. § 1715l(d)(4). See Joint Statement of Undisputed Facts ¶ 2; Joint Ex. 2.

and displaced families"). Despite the varied language of these two statutes' titles that indicate applicability to low-income housing, see § 44-5-13.11, and moderate income families, see 12 U.S.C. § 1715l, both statutes are intended to promote the availability of low-income housing. This Court, therefore, must attempt to give effect to the intent of these statutes. See Webster, 774 A.2d at 75.

Having determined that both § 44-5-13.11 and 12 U.S.C. § 1715l seek to encourage private entities to rehabilitate property that will ultimately provide low-income housing options, this Court must now examine the purpose and intent of each of the conflicting definitions presented by the parties. The latter two definitions, that could form the basis of the 75% rule espoused by Defendant, are readily distinguishable from the intent and purpose of the state and federal statutory schemes to provide low-income housing options. First, Defendant's reliance on a definition within 24 C.F.R. § 574, entitled "Housing Opportunities for Persons with AIDS," is wholly misplaced. This regulatory framework was authorized under the AIDS Housing Opportunity Act, codified at 42 U.S.C. §§ 12901 et seq., whose stated purpose is "to provide States and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with acquired immunodeficiency syndrome and families of such persons." 42 U.S.C. § 12901. Based on this expressly stated purpose, the regulatory definition of "substantial rehabilitation" arising under this Act is wholly irrelevant to the factual circumstances underlying this case or to the purpose of encouraging private entities to rehabilitate property that will ultimately provide low-income housing options, as embodied by § 44-5-13.11 and 12 U.S.C. § 1715l(a). For this reason, the definition found in 24 C.F.R. § 574.3 is inapplicable to the instant case.

Similarly, to the extent there is any reliance on the similar definition found in "Alterations of existing housing facilities," 24 C.F.R. § 8.23, that provision also does not further the purpose of providing low-income housing options. That definition is administered by HUD's Office of Fair Housing and Equal Opportunity and relates to the applicability of certain accessibility requirements. See 24 C.F.R. § 8.23 (noting that, if "the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the [accessibility requirements] of § 8.22 shall apply"). HUD's participation in the Woodland Manor project did not address accessibility but rather low-income housing, as reflected by the language of Form HUD-92466 (Regulatory Agreement for Multifamily Housing Projects) requiring Plaintiff to "make dwelling accommodation and services available to occupants at charges not exceeding those established in accordance with a rental schedule approved in writing" by HUD. Joint Statement of Undisputed Facts ¶ 5; Joint Ex. 5. Accordingly, the definition of "substantial rehabilitation" contained in 24 C.F.R. § 8.23, like 24 C.F.R. § 574.3, is irrelevant to the instant action.

The Defendant contends that the remaining definition that it relies upon relates to "their administration and application for funds in connection with their Community Development Block Grant, or CDBG programs." Def.'s Post-Trial Mem. at 5. Rather than delve into the purpose of HUD's Community Planning and Development programs or regulations, Defendant merely concludes that "[t]he tax assessor's decision to use the Community Planning and Development definition was hers to make under the statute. . . . Her decision has presumptive validity, no matter how she arrived at that decision, irrespective of the fact that there were other permissible interpretations or definitions that could be applied, unless her decision was clearly erroneous." Id. at 6.

Defendant accurately recites our Supreme Court's recent recitation of the "'well-established maxims of statutory construction.'" In re Proposed Town of New Shoreham Project, 25 A.3d 482, 505 (R.I. 2011) (quoting Town of Burrillville v. Pascoag Apartment Associates, LLC, 950 A.2d 435, 445 (R.I. 2008). In Town of New Shoreham Project, the Supreme Court stated:

> Of import here, "when a statute is susceptible of more than one meaning," we must subscribe to the canon of statutory construction that gives due consideration to the agency's interpretation. [Town of Burrillville, 950 A.2d at 445.] To resolve which of the two or more permissible statutory interpretations will control, we "give deference to an agency's interpretation of an ambiguous statute that it has been charged with administering and enforcing, provided that the agency's construction is neither clearly erroneous nor unauthorized." Id. (quoting Rossi v. Employees' Retirement System, 895 A.2d 106, 113 (R.I. 2006).

Town of New Shoreham Project, 25 A.3d at 505. Notably, the Court goes on as follows:

> In effect, "[t]he interpretation of a statute by the administering agency is not controlling, but it is entitled to great weight." Pascoag Apartment Associates, LLC, 950 A.2d at 445-46. This level of deference is applied "even when the agency's interpretation is not the only permissible interpretation that could be applied." Auto Body Association of Rhode Island v. State Department of Business Regulation, 996 A.2d 91, 97 (R.I. 2010) (quoting Pawtucket Power Associates Limited Partnership, 622 A.2d at 456-57). Nonetheless, we do not . . . afford an agency's statutory interpretation deference in every case. It is only when we are faced with an ambiguous statute and must resort to "'maxims of statutory construction'" that this Court will give weight to the agency's articulated interpretation. Pascoag Apartment Associates, LLC, 950 A.2d at 445; Pawtucket Power Associates Limited Partnership, 622 A.2d at 456-57. And of course, regardless of ambiguities or deference due, this Court always has the final say in construing a statute. See Pascoag Apartment Associates, LLC, 950 A.2d at 445 ("[T]his Court is the final arbiter of questions of statutory construction.") (quoting Rossi, 895 A.2d at 113).

Town of New Shoreham Project, 25 A.3d at 506.

In reviewing the Tax Assessor's construction of "substantial rehabilitation" as defined in HUD's Community Planning and Development Glossary of Terms, it is evident to this Court that that construction is clearly erroneous. Section 44-5-13.11 was crafted to address the assessment and taxation of "[q]ualifying low-income housing," not the multi-faceted approach of jobs creation and employment, streamlined governmental functions, citizen participation, sustainable solutions, and the creation of safe, decent and affordable housing that are the bedrock principles of HUD's Office of Community Planning and Development. The Housing and Community Development Act of 1974, as amended and codified in 42 U.S.C. § 5301 et seq., governs that Office and the manner in which Community Development Block Grants are distributed to states and their political subdivisions. The stated purpose of the Community Development Block Grant Program is to facilitate the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income."[8] 42 U.S.C.A. § 5301(c). This purpose is accomplished not only through the facilitation of low- and moderate-income housing projects, but also through improving available community services, see id. § 5301(c)(4), creating rational uses of land and resources, see id. § 5301(c)(5), restoring properties of historical and architectural value to the community, see id. § 5301(c)(7), and improving energy efficiency through conservation and alternative energy sources. See id. § 5301(c)(9). The broad scope of these goals behind both the Office of Community Planning and Development and the Community Planning and Development Block Grant Program can be easily differentiated from the singular purpose behind

[8] This statutory language echoes the stated purpose of HUD's Office of Community Planning and Development, which is "to develop viable communities by promoting integrated approaches that provide decent housing, a suitable living environment, and expand economic opportunities for low and moderate income persons." See Community Planning and Development Overview, HUD.gov, http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning (last visited May 1, 2013).

§ 44-5-13.11 to address the assessment and taxation of "[q]ualifying low-income housing." Based on these significant differences in scope, this Court finds that the Tax Assessor's use of the definition of "substantial rehabilitation" found in HUD's Community Planning and Development Glossary of Terms was erroneous.

The Tax Assessor's chosen definition of "substantial rehabilitation" should not be afforded great weight in any event. Picard conceded that she had never received any formal request to apply § 44-5-13.11 to an existing, renovated property aside from the Woodland Manor project, and that she only considered the application of § 44-5-13.11 in the context of a new construction project where the issue of "substantial rehabilitation" was not in question. Not having considered the statute in the context of an existing project prior to Plaintiff's instant case, it cannot be said that Picard's office had routinely relied upon its construction of "substantial rehabilitation" in the past to support its present construction. See Unistrut Corp. v. State Dep't of Labor & Training, 922 A.2d 93, 101 (R.I. 2007) (quoting United States v. 29 Cartons of * * * An Article of Food, 987 F.2d 33, 38 (1st Cir. 1993) (quotation omitted)) ("[T]he true measure of a court's willingness to defer to an agency's interpretation of a statute depends, in the last analysis, on the persuasiveness of the interpretation, given all the attendant circumstances."). The most significant policies underlying the concept of deference to an agency's interpretation are "the 'expertise' of the agencies in question, their intense familiarity with the history and purposes of the legislation at issue, [and] their practical knowledge of what will best effectuate those purposes. In other words, they are more likely than the courts to reach the correct result." Antonin Scalia, Judicial Deference to Administrative Interpretations of Law, 1989 Duke L.J. 511, 514 (1989). Here, not a single one of these policies is served by giving deference to the Tax

Assessor's interpretation of § 44-5-13.11 because she admittedly had no expertise or practical knowledge regarding this particular statute prior to Plaintiff's request that the statute be applied.

Certainly, it would be more appropriate to give deference to HUD, as the agency charged with administering and enforcing low-income housing programs, to determine if there was "substantial rehabilitation" of a property that would warrant application of § 44-5-13.11. Importantly, HUD did make that determination, vis-à-vis its approval and certification by its inspector and HUD's subsequent insurance on the loan Plaintiff received from Suburban Mortgage in the sum of $19,942,600.

Moreover, this Court finds that Plaintiff's reliance on the definitions of "substantial rehabilitation" found in HUD Handbooks 4560.1 and 4460.1 come significantly closer to effectuating the purpose of § 44-5-13.11 than any definition relied upon by Defendant. Unlike the definitions relied upon by Defendant, Plaintiff's preferred definition comes directly from both the "HUD Handbook 4560.1 – Mortgage Insurance for Multifamily Moderate Income Housing Project" and the "HUD Handbook 4460.1 – Architectural Analysis and Inspections for Project Mortgage Insurance." By their names alone, these handbooks are on point substantively with the purpose of § 44-5-13.11, and the definition found in each of these handbooks supports the purpose behind both § 44-5-13.11 and 12 U.S.C. § 1715l, to wit, to encourage private entities to rehabilitate property that will ultimately provide low-income housing options. As such, this Court holds that the definition of "substantial rehabilitation" found in both "HUD Handbook 4560.1 – Mortgage Insurance for Multifamily Moderate Income Housing Project" and "HUD Handbook 4460.1 – Architectural Analysis and Inspections for Project Mortgage Insurance" applies to the instant case.

Finally, the Court notes that taxing statutes are to be strictly construed with any doubts resolved in favor of the taxpayer. See Potowomut Golf Club, Inc. v. Norberg, 114 R.I. 589, 592, 337 A.2d 226, 227 (1975) (reiterating "the basic proposition that taxing statutes are to be strictly construed against the taxing authority"); see also Manning v. Bd. of Tax Comm'rs of R.I., 46 R.I. 400, 127 A. 865, 870 (1925) ("Doubts as to the construction of laws of this character are to be resolved in favor of the taxpayer."). For this additional reason, the Court concludes that any of the definitions relied upon by the Tax Assessor are erroneous and that the Plaintiff's preferred definition of "substantial rehabilitation" controls in this case.

The evidence clearly established that Plaintiff satisfied the definition found in the HUD Handbooks. Indeed, the information found on Form HUD-92330 (Mortgagor's Certificate of Actual Cost), as submitted upon completion of construction, indicates that the total construction and development costs for the project were $5,125,037 while the costs of land and building acquisition were $16,676,292. See Joint Ex. 8. The construction costs associated with this project, therefore, are clearly more than "15 percent of the total estimated replacement cost of the project." HUD Handbook 4560.1, ch. 2, ¶ 2-3. For this reason, Plaintiff is entitled to the tax benefits conferred by § 44-5.13.11, and the Tax Assessor's actions in denying Plaintiff's application for the eight percent (8%) tax rate were in violation of the statute and illegal.

C

Damages

Having determined that the tax assessed against the Woodland Manor properties by the Tax Assessor was illegal, this Court must now determine the damages owed to Plaintiff as a result of that illegal tax assessment. Sec. 44-5-30 provides, in pertinent part:

> [I]f it appears that the tax assessed is illegal in whole or in part, the court shall give judgment that the sum by which the taxpayer has

> been so overtaxed, or illegally taxed, with his or her costs, be deducted from his or her tax; but if the taxpayer's tax be paid, whether before or after the filing of the petition, then the court shall give judgment for the petitioner for the sum by which he or she has been so overtaxed, or illegally taxed, plus the amount of any penalty paid on the tax, with interest from the date on which the tax and penalty were paid and costs, which judgment shall be paid to the petitioner by the city or town treasurer out of the treasury.

Id.

Here, Plaintiff only challenges the tax assessed for the year 2009. Under the rate assessed by the Tax Assessor, Plaintiff's total tax burden for that year was $388,612.49. Joint Ex. 34. However, under the eight percent (8%) tax rate provided for by § 44-5-13.11, Plaintiff's total tax burden for 2009 would have been $250,247. Joint Statement of Undisputed Facts ¶ 11; Joint Ex. 11. Plaintiff made its quarterly tax payments, as assessed by Tax Assessor, on the following dates: August 15, 2009; November 15, 2009; February 15, 2010; and May 15, 2010.

As Plaintiff has already paid the illegal tax assessed by the Tax Assessor, this Court must "give judgment . . . for the sum by which [Plaintiff] has been so overtaxed, or illegally taxed, plus the amount of any penalty paid on the tax, with interest from the date on which the tax and penalty were paid and costs." § 44-5-30. Based on the differences in the tax as assessed and as permitted by § 44-5-13.11, Plaintiff overpaid $34,591.37 on each of its quarterly tax payments for the year 2009. As such, Plaintiff is now entitled to damages to recover those overpayments, with 12% statutory interest accruing as of the dates those payments were made: August 15, 2009; November 15, 2009; February 15, 2010; and May 15, 2010.

IV

Conclusion

For the reasons set forth herein, this Court finds that Defendant's 2009 real estate tax assessment on Plaintiff's Lots 17 and 19 was illegal, insofar as the assessment imposed a greater tax burden than that provided for by § 44-5-13.11, which the Court finds was applicable to Plaintiff.

Counsel for Plaintiff shall submit a judgment consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Springfield Armoury L.P. v. Patricia Picard

CASE NO: KC-2010-0038

COURT: Kent Superior Court

DATE DECISION FILED: May 2, 2013

JUSTICE/MAGISTRATE: K. Rodgers, J.

ATTORNEYS:

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For Defendant: Patrick J. Sullivan, Esq.