

Douglas E. Morris and Kathleen A. Morris

v.

Town of Durham

Docket No. 3844-87

DECISION

A hearing in this appeal was held, as scheduled on May 26, 1989. The Taxpayer represented themselves. The Town was not represented.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$66,800 (land, \$13,360; buildings, \$53,440) placed on their real estate, located on Buck's Hill Road for the 1987 tax year. The property is a residential condominium in a cluster of eight units.

Neither party challenged the Department of Revenue Administration's equalization ratio of 31 percent for the 1987 tax year for the Town of Durham.

Based on that ratio the Taxpayers' assessment equates to a market value of \$215,480.

The Taxpayers stated that the eight units are all very similar but that there is some variation in square foot area and interior items such as number of bathrooms and fireplaces. They stated that initially their unit (#21) and unit #29 had been retained by the developer, Walter W. Cheney, as rental units.

However, in December of 1986, after units 21 and 29 were advertised for sale at \$120,000, they purchased unit 21 for \$120,000.

The Taxpayers submitted an analysis sheet and graphs of the assessments of the eight units in support of their claim of overassessment. They noted that their unit along with unit 29 had the highest square foot price in the eight units and, in fact, the highest assessment even though it was one of the three smallest units in size in that complex.

In regard to the Taxpayers allegation the Board rules as follows.

Douglas E. Morris and Kathleen A. Morris v. Town of Durham

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state, and upon all estates within the same

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board finds that the sale of unit 21 for \$138,100 (on which the assessment was based) on April 30, 1985, from Walter W. Cheney, Inc. to Walter W. Cheney, d/b/a Cheney Enterprises was not an arms length sale, due to the

Douglas E. Morris and Kathleen A. Morris v. Town of Durham

business connections of the grantor and grantee. The Board therefore rules that this sale in and of itself is not a proper basis for assessment.

The Board finds that based on the following analysis of sales, the median square foot value for a standard unit in the Taxpayers complex, as of April 1, 1987, is \$106.

<u>Per Unit # Ft.</u>	<u>Sales Price</u>	(1%/Mo.) <u>Time Adj.</u>	Extra <u>Bath</u>	<u>Fireplace</u>	Adj. <u>Sales Price</u>	Soft <u>Area</u>	Price <u>Sq.</u>
19	\$133,200	1.23	-6000	-5000	\$152,836	1440	106
21	\$120,000	1.04	----	----	\$124,800	1224	102
23	\$125,100	1.16	----	----	\$145,116	1280	113
25	\$120,000	1.09	----	-5000	\$125,800	1224	103
27	\$145,000	1.06	-3000	----	\$150,700	1280	118
31	\$142,500	1.13	-6000	----	\$155,025	1440	108
33	\$108,500	1.16	----	----	\$125,860	1280	98

The Board finds that the correct equalization ratio for the Town of Durham for the 1987 tax year is 31 percent.

Based on the above findings, the Board rules that the correct assessment for the 1987 tax year is calculated as follows:

$$1224 \text{ sq. ft.} \times \$106 = \$129,750 \times .31 = \$40,220$$

If the taxes have been paid, the amount paid on the value in excess of \$40,220 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

(Ms. Richmond did not sit.)

Anne S. Richmond, Esquire, Chairman

Douglas E. Morris and Kathleen A. Morris v. Town of Durham

-

George Twigg, III, Member
Acting Chairman

-

Peter J. Donahue, Member

-

Paul B. Franklin, Member

Date: 6/15/89

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Douglas E. & Kathleen A. Morris, taxpayers; and the Chairman, Board of Selectmen of Durham.

-

Michele E. LeBrun, Clerk

Date: 6/15/89

0009