

Richard T. Sokolow and John P. Thompson,
Trustees of the Woodland Road Realty Trust
v.
Town of Conway

Docket No. 6010-89

Richard T. Sokolow
v.
Town of Conway

Docket No. 6011-89

John P. Thompson, Jr.
v.
Town of Conway

Docket No. 6007-89

John P. Thompson, Sr.
v.
Town of Conway

Docket No. 6009-89

David C. Wycoff
v.
Town of Conway

Docket No. 6008-89

DECISION

These appeals were consolidated for hearing, and because they all share certain facts, a single decision is being issued for all appeals.

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the following 1989 assessments.

<u>Tax Map and Lot</u>	<u>Assessment</u>
15/36-9A (Unit 9)	\$125,000
15/36-10A (Unit 10)	\$125,000
15/36-11A (Unit 11)	\$125,000
15/36 (Land only)	\$114,000
15/36-8A (Unit 8)	\$129,000
15/36-2A (Unit 2)	\$125,000
15/36-6A (Unit 6)	\$129,000
15/36-4A (Unit 4)	\$125,000

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find, except for proving Unit 8 needs to be adjusted to \$125,000, the Taxpayers failed to carry this burden.

The facts are somewhat complicated and uncontroverted. (All facts are as of April 1, 1989.) The Taxpayers own 7 units in a condominium, and one Taxpayer owns land reserved for the future development of 5 more units. (No evidence at all was presented on the land only, and therefore, the remainder of this Decision addresses the units.) Units 8-11 were entitled to certificates of occupancy (CO's), but the CO's had not been issued by the Town for reasons

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not clearly presented to the board. Units 8-11 were, however, occupied as
rental units.

Units 2, 4 and 6 were not entitled to CO's because while the Town had authorized their construction, occupancy was conditioned upon the construction of a second access road that had not been built. Despite this condition, the Taxpayers used and occupied Units 2, 4 and 6.

Based on these facts, the Taxpayers claimed they were entitled to an abatement. While the facts presented by the Taxpayers would appear to warrant an abatement, the Taxpayers did not supply any information from which the board could make an informed adjustment to the assessments. On Units 8-11, the Taxpayers did not present sufficient information about the rental income and the expenses to arrive at any conclusion. Additionally, the Taxpayers did not provide any information on the marketing of these or other units in the condominium. Concerning Units 2, 4 and 6, the Taxpayers did not submit any information about the estimated costs to build the road or about the anticipated construction date.

Finally, the Taxpayers did not present any market evidence on the units' value. The Taxpayers testified Units 8-11 were worth only \$23,000 each and Units 2, 4 and 6 were worth \$5,000 each. Such testimony is baseless and preposterous when the building and land costs were approximately \$84,000 per unit.

Because of the lack of information, any adjustment the board might make would be purely speculative, and thus, no relief can be provided.

While the Taxpayers did not carry their burden, the board is disappointed with the Town's response and attitude. Basically, the Town decided not to even review the unit assessments because of legal battles between the Town and the Taxpayers. This attitude ignores the assessing and taxation statutes. See, e.g., RSA 75:1; *Paras v. City of Portsmouth*, 115 N.H. 63, 67-68 (1975) (municipality must consider all relevant factors in arriving at a proper assessment). Certainly, given the problems with this development, the Town assessor should have ignored the other legal and political battles and should have reviewed the assessments. The assessments were based on arms-length sales of units that had all approval in place and upon which financing could be obtained. Here, some of the units were not entitled to CO's until the second

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access road was built. As of April 1, 1989, no road existed and based on the downturn in the market and the developer's problems with the Town (self-created and otherwise), it was reasonable to conclude the road would not be built in the near future. Despite this, the Town made no adjustment to the units' assessments. (The Town did adjust the reserved land by 50% because of problems with developing an additional 5 units.)

The Taxpayers testified Unit 8 was a middle unit but was assessed as an end unit. The Town did not dispute this. Therefore, the assessment on Unit 8 is reduced to \$125,000. If taxes have been paid, those paid on the value in excess of \$125,000, plus other assessment for the Taxpayer, shall be refunded by the Town with 6% interest from the date paid to the refund date.
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Richard T. Sokolow, John P. Thompson, Sr., John P. Thompson, Jr., David C. Wycoff, Taxpayers; and the Chairman, Selectmen of Conway.

Brenda L. Tibbetts, Clerk

Date: December 16, 1991

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