

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

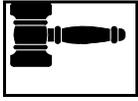
Michele E. LeBrun, Member

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

0007



PROPERTY TAX CONSOLIDATED APPEALS
ARTIST BROOK CONDOMINIUMS
TOWN OF CONWAY, NEW HAMPSHIRE



TO: Board Of Tax and Land Appeals

FROM: Scott Bartlett, Board's Review Appraiser

DATE: December 3, 1993

RE: Initial Investigation and Analysis of property tax consolidated appeals of Artist Brook Condominiums v. Town of Conway for the tax year of 1989.

Dear Board:

According to your request, I have conducted an investigation and analysis of the 1989 assessments of the Artist Brook Condominiums owned by Woodland Road Realty Trust, Richard Sokolow, John Thompson, Sr., John Thompson, Jr. and David Wyckoff, located in the town of Conway.

The purpose of the report is to estimate a fair and equitable assessed value as defined by RSA 75:1 as of April 1, 1989. The assessed value is defined as "market value or some legally authorized fraction thereof." (IAAO 4) The property rights considered are fee simple.

An exterior inspection of the property was made on December 2, 1993. I obtained property record cards of the properties involved, as well as the property record cards of five additional units which were not under appeal and a copy of the site plan from the assessors office. I did not attempt to contact any of the parties of this appeal but instead relied on the transcript and the exhibits of the 1989 appeal for any additional information. Interior information and measurements were taken from the property record cards.

The DRA's equalization ratio of 1.00 is assumed to be representative of the level of assessment in the Town of Conway.

After considering all factors contained in this report, the Board's file on this appeal and furthermore, based upon my experience as a real estate appraiser, it is my opinion that the fair assessed value of the fee simple rights in the subject properties as of April 1, 1989 are as follows:

OWNER'S NAME	DOCKET#	UNIT #	1989 ASSESSMENT	RECOMMENDED ASSESSMENT
Thompson, Sr	6009-89	2	\$125,000	\$124,000
Sokolow	6011-89	4	\$125,000	\$124,000
Wyckoff	6008-89	6	\$129,000	\$128,000
Thompson, Jr	6007-89	8	\$125,000 ¹	\$124,000
WRRT	6010-89	9	\$125,000	\$91,400
WRRT	6010-89	10	\$125,000	\$91,400
WRRT	6010-89	11	\$125,000	\$91,400
WRRT	6010-89	Land	\$114,000	\$81,900

I hereby submit the following report.

Sincerely,

Scott W. Bartlett

¹ As adjusted by the BTLA in its' decision dated December 16, 1991.

SUMMARY OF FACTS

Purpose of Report: The purpose of this report is to estimate a fair and equitable assessment of the fee simple rights, in the subject property as defined by RSA 75:1 as of April 1, 1989.

Location: The subject property is located off of Woodland Road, Conway, New Hampshire. Woodland Road is off of Artist Falls Road, which is off of Route 16 / Route 302, near the Conway and North Conway border. Cranmore Mountain is located 1± mile northeast of the property and can be viewed from the site.

Site: The site consists of 7.5± acres. The current access to the site is off of Woodland Road across a bridge which spans Artist Falls Brook. The lot is bounded by the Artist Falls Brook on the south side, by lot #15-28-28 on the east, lots #15-44B and #15-44-1 on the north and Woodland Road on the west.

According to the plot plan, job no. 730, Addendum A, the lot has 188± feet of frontage on Woodland Road. This frontage provides a possible second access; however, because of the irregular shape of the lot, the access is crossed by the Artist Falls Brook and is 37± feet wide at its narrowest point.

Approval for 3 of the existing units and 5 potential units is contingent on a second access. No testimony was given on the location of this second access; therefore for the purpose of this report, it will be assumed that access can be obtained off of Woodland Road.

Improvements: The Artist Brook Condominiums consist of 2-2½ story, frame buildings with 6 condominium units each. The buildings were built in 1987, have a concrete foundation, double sided walls, and a gable style roof with asphalt shingles. The units are townhouse style, contain 1,715 square feet of gross livable area, 2 full bathrooms, a wood stove and a full unfinished basement. 7 of these units are under appeal. The other 5 sold and had received certificates of occupancy.

Other improvements include a driveway, bridge and parking area which appear adequate for access to and parking for the current units and a small pool with a shed and surrounding fence.

Highest and Best Use: The highest and best use of 4 of the condominium units is use as residential dwellings. At the time of the hearing, these units had not received certificates of occupancy; however, the only requirement was that the footings of the wood decks be brought up to standards. This would have to be completed prior to sale; however, it is the opinion of this appraiser that the repair of the decks was relatively minor and could be accomplished with relative ease and minimum expense.

3 of the units could not be occupied until the second access road was completed. The approval for the 5 additional units was also contingent on the

second access. The highest and best use of the 3 units and the 5 additional units would be for future marketing and development. Once the access was completed, the 3 units could be marketed and the 5 units could be developed. As of April 1, 1989, the most likely buyer of this property would be a developer, who would be interested in the 3 units and the land as a package.

The Town's approval for 9 units did not state which units would receive approval prior to the construction of an access road. Mr. Sokolow stated that he requested occupancy permits for units 8, 9, 10 and 11, but not units 2, 4 and 6, since he could not receive occupancy for the final three. These three units and the vacant land are all under different ownership; therefore, it would be most likely that units 9, 10 and 11 would be grouped with the vacant land for sale, as all four parcels are owned by Woodland Road Realty Trust. It will be assumed that units 2, 4, 6 and 8 only need the repair of the deck footings to receive occupancy permits and units 9, 10, 11 and the vacant land need the access road as well as the deck footings on the three units prior to receiving occupancy permits.

Assessments: All of the interior units in the Artist Brook Condominiums were assessed at \$125,000. The end units were assessed at \$129,000. Of the units under appeal, only unit #6, owned by David Wyckoff, Docket #6008-89, is an end unit.

The vacant land, which has approval for 5 additional units, was assessed at \$114,000, or \$22,800 per unit.

ANALYSIS AND VALUATION

The 5 units which are not under appeal sold between December 1987 and April 1989. The selling prices ranged from \$104,000 to \$133,130. Unit #5 sold to John P. Thompson from The Woodland Road Realty Trust for \$104,000 on April 16, 1989. Since, John Thompson is a trustee of The Woodland Road Realty Trust, this sale can not be considered as an arms length transaction. The remaining 4 sales sold from December 1987 to April 1988 with a range of \$119,000 to \$133,130. Listed below are the particulars on the remaining 4 sales:

Grantor: Woodland Road Realty Trust
Grantee: Stellati, George E., Jr.
Book/Page: 1392/328
Sale Date: December 29, 1987
Sale Price: \$130,000
Unit Number: #1, End Unit

Grantor: Woodland Road Realty Trust
Grantee: Aranson, Mark & Kathy Ellen
Book/Page: 1311/478
Sale Date: March 18, 1988
Sale Price: \$133,130
Unit Number: #3, Middle Unit

Grantor: Woodland Road Realty Trust
Grantee: Cawley, Constance
Book/Page: 1319/074
Sale Date: April 15, 1988
Sale Price: \$129,000
Unit Number: #7, End Unit

Grantor: Woodland Road Realty Trust
Grantee: Russo, Joseph & Angela M.
Book/Page: 1319/086
Sale Date: April 15, 1988
Sale Price: \$119,000
Unit Number: #12, End Unit

The average selling price is \$127,783. The 1989 assessments were \$125,000 for the middle units and \$129,000 for the end units. Both Mr. Sokolow, the taxpayers representative, and Mr. Fennessy, the Town's assessor, agreed that these assessments were representative of fair market value as of April 1, 1989 for the units with certificates of occupancy. Since, the sales support the assessments, I will assume that the assessments are truly representative of fair market value for the subject units with certificates of occupancy.

The units under appeal do not have certificates of occupancy as of the date of assessment. The market value of the 4 units that had structural problems with the decks can be determined by subtracting the "cost to cure"

from the full market value of a unit with a certificate of occupancy. No information was presented related to the cost of repairing the decks. I have assumed that the decks in question are the rear decks. Based on a visual inspection, the decks have a total square footage of 220 square feet. Using the Marshall & Swift Valuation Service as a guide, I determined that decks of this size could be replaced for \$1,500. However, the entire deck does not need to be replaced; only the footings need repairing. Therefore, it is my opinion that the cost to cure would be \$1,000.

According to my assumption in the Highest and Best use analysis, units #2, #4, #6 and #8 could receive certificates of occupancy once the deck footings were repaired. 3 of these units are middle units and are assessed at \$125,000 each and are assumed to have a market value of \$125,000 once the certificate is issued. Reducing this value by the cost to cure of \$1,000, indicates a fair market value and a fair assessed value as of April 1, 1989 of \$124,000 each. Unit #6 is an end unit and assessed at \$129,000; the indicated market value and fair assessed value as of April 1, 1989 of unit #6 is \$128,000.

As stated above, the remaining 3 units, units #9, #10 and #11, and the vacant land, with approval for 5 additional units could be marketed to a developer. A developer would consider the future selling prices of all 8 units and deduct construction costs, carrying costs, marketing costs and a reasonable profit to determine how much he would be willing to pay for the property as of April 1, 1989. Very little testimony was given on the expected costs of future development; therefore, it is necessary for me to estimate these costs.

The total future value of the development can be determined from the indicated market value. The market was uncertain in 1989; therefore, for the purpose of this report I will not use any trending. 2 of the units are end units and will have a future value of \$129,000 each. 6 of the units are middle units and will have a future value of \$125,000 each.

Construction costs consist of the construction of 5 units, the construction of the second access road and the repairs to the 3 decks. Mr. Sokolow testified that the cost of construction for the existing units was \$75,000 per unit; therefore, a cost of \$75,000 per unit will be used for the 5 units. According to the plan in Addendum A, it is 700 feet from the edge of Woodland Road to the existing road. Estimating an average width of 30 feet, an access road would have a total square footage of 21,000 square feet. Using the Marshall & Swift Valuation Service as a guide, it would cost \$1.50 per square foot or \$31,500 to install this road. An additional \$25,000 will be added to account for a bridge over the Artist Brook Falls and site work along the edge of the brook. As stated above, a cost of \$1,000 per deck will be used to repair the decks.

The carrying costs, marketing costs and profit are much harder to estimate. Carrying costs include interest payments, real estate taxes, condominium fees of completed units and any unforeseen fees. Since, three units are already in place, some of the carrying costs could be offset by renting out

the units and/or selling the units once the access road was completed. For the purpose of this report, the carrying costs will be considered to be 10% of the total future value.

The marketing costs would vary based on the type of marketing that was used. The most expensive, but also the most effective, would be a listing with a local real estate broker. Typical fees are 6% of the selling price. While other methods of marketing may be less expensive, the marketing time may be extended; therefore, 6% of the total future value will be used for marketing costs.

Expected profit for this type of development would be dependant on the expected development and marketing time, the expected risk and rates of returns on other types of investments. Units #9, #10 and #11 could be marketed as soon as the road was completed; the other 5 units could be marketed once construction of the units was completed. It is my opinion that the expected development and marketing period would be 1.5 to 2 years and that the expected profit would be between 20% and 25% of the amount invested by the developer. A typical developer would be investing 25% to 30% of his own money and borrowing the rest (interest payments are accounted for in carrying costs). Estimating a total investment of \$250,000 and an expected return of 22.5%, the expected profit would be \$56,250.

Listed below is a summary of the above selling prices and costs:

Total Future Value:	
2 units @ \$129,000	\$ 258,000
6 units @ \$125,000	<u>750,000</u>
Total Future value:	\$1,008,000
Construction Costs:	
5 units @ \$75,000 each =	\$375,000
21,000 sf Road @ \$1.50 =	31,500
Bridge and Site Work =	25,000
Repair 3 decks \$1K each=	<u>3,000</u>
Total Construction Costs:	(\$ 434,500)
Carrying Costs: 10% of \$1,008,000	(\$ 100,800)
Marketing Costs: 6% of \$1,008,000	(\$ 60,480)
Expected Profit: 22.5% of \$250,000	<u>(\$ 56,250)</u>
 INDICATED MARKET VALUE	 \$355,970

To determine the value of the individual units and the land, I must first deduct the value of the 3 existing units in order to determine the value of the land and amenities. Subtracting \$225,000 (3 x \$75,000) from the indicated market value of \$355,970 indicates that the land and amenity value is \$130,970, or \$16,371.25 per unit.

The indicated market value and fair assessed value as of April 1, 1989, of the vacant land with approval for 5 units is \$81,856.25 (16371.25 x 5), rounded to \$81,900. The indicated market value and fair assessed value as of April 1, 1989, of the 3 existing units is \$91,371.25 (75000 + 16372.25), rounded to \$91,400.

**ADDENDUM A - SITE PLAN OF ARTIST FALLS CONDOMINIUM AND
TOWN MAP OF SUBJECT PROPERTY**

ADDENDUM B - QUALIFICATIONS

SCOTT W. BARTLETT

CURRENT POSITION:

06/93 - Present: BOARD OF TAX AND LAND APPEALS
CONCORD, NH

Review Appraiser

Responsible for preliminary and final reports for reassessment petitions, appraisal reports on consolidated appeals and special requests from the Board.

MASS APPRAISAL EXPERIENCE:

07/86 - 05/93:M.M.C., INC.
CHELMSFORD, MA

07/86 - 10/86:Residential Data Collector

11/86 - 11/87:Commercial Data Collector

12/87 - 05/89:Commercial Staff Appraiser

06/89 - 05/93:Senior Commercial Appraiser -Responsible for Commercial, Industrial and Utility Appraisals in the New Hampshire, Maine and Vermont.

OTHER EMPLOYMENT:

01/85 - 06/86:Boghosian Contracting - Painter/Carpenter Trainee.

02/83 - 12/84:Massachusetts Casualty Insurance Company - Claims Adjustor.

APPRAISAL EDUCATION:

International Association of Assessing Officers:

- Course I: Fundamentals of Real Property Appraisal
- Course II: The Income Approach to Valuation
- Course 301: Mass Appraisal of Residential Property
- Course 302: Mass Appraisal of Income Producing Property
- Course 3: Development & Writing of Narrative Appraisal Reports

Valuation of Railroad and Utility Properties Workshop

SPECIAL QUALIFICATIONS:

State of New Hampshire: Real Estate Appraiser Supervisor

State of Vermont: Certified Project Supervisor

State of Massachusetts: Registered Real Estate Salesperson

State of Maine: Certified Maine Assessor

IAAO - Subscribing Member, CAE Candidate

EDUCATION:

Hamilton College, Clinton, New York - Bachelor of Arts: Economics/Mathematics

University of Massachusetts, Roxbury, MA - Intro to COBOL, Computer Science

Richard T. Sokolow and John P. Thompson,
Trustees of the Woodland Road Realty Trust
Docket No. 6010-89, 8888-90 12102-91PT

Richard T. Sokolow
Docket No. 6011-89 and 8885-90PT

John P. Thompson, Jr.
Docket No. 6007-89, 8886-90 and 12101-91PT

John P. Thompson, Sr.
Docket No. 6009-89 and 8887-90PT

David C. Wycoff
Docket No. 6008-89 and 8889-90PT

v.

Town of Conway

ORDER

This order relates to two issues:

- 1) the proper assessment on the units; and
- 2) the "Taxpayers'" request for reimbursement of their filing fees.

Proper Assessments

The parties notified the board that they accepted the assessments in the board's inspector's reports. Thus, if taxes have been paid, the "Town" shall refund the taxes, with interest, in accordance with those figures.

Fees

The board denies the Taxpayers' request for reimbursement of filing fees. Under RSA 76:17-b, the fees are reimbursable when the board "grants an abatement

because of an incorrect tax assessment due to a clerical error, or a plain and clear error of fact, and not of interpretation, as determined by the board***." See also TAX 201.39(b). The Taxpayers are not entitled to reimbursement under this statute for the following reasons.

1) Much of the Taxpayers' information concerning valuation was not presented until the hearings. Moreover, at the hearings the Taxpayers gave inconsistent evidence, e.g., rent levels at the units.

2) The board was required to obtain the inspector's report to decide these appeals. These reports (1989 -- 17 pages, 1990 -- 24 pages) required significant time, review and analysis, including a site visit and a sales analysis. The inspector spent six days on the work. Such work demonstrated the complexity of the Taxpayers' abatement requests.

3) The Taxpayers' position on what the proper assessments should have been was not supported by any evidence. Rather, the abatements were based on the board inspector's reports.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard T. Sokolow, individually as Taxpayer and as Agent for John P. Thompson, Jr., John P. Thompson, Sr., and David C. Wyckoff, Taxpayers; and Peter Hastings, Esq., Attorney for Town of Conway.

Dated: March 8, 1994

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Valerie B. Lanigan, Clerk