

Alan I. and Anita Levine

v.

Town of Lincoln

Docket No.: 6320-89

Robert F. and Nancy J. Lovezzola

v.

Town of Lincoln

Docket No.: 6323-89

Elio and Rita Dilibero

v.

Town of Lincoln

Docket No.: 6324-89

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 "Town's" 1989 assessments of the following:

<u>Tax Map and Lot</u>	<u>Assessment</u>	<u>Type of Unit</u>
29/043 (Levine)	\$135,300	Union
29/079 (Lovezzola)	\$208,750	Reading
29/072 (Dilibero)	\$135,300	Union

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 the Taxpayers carried this burden and proved disproportionality.

The Taxpayers testified that units 43 and 72 are "Union Model" condominium units and unit 79 is a "Reading Model" condominium unit. The Union model units have two levels and contain 1,352 square feet of living area and the Reading model is a four bedroom unit containing 2,127 square feet of living area. All

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units are situated in the high density, 90 unit Lincoln Station Phase I condominium development constructed during 1983 and 1984. The units were in the first project developed by the Satter Companies ("Satter") in New Hampshire. Satter subsequently developed three additional condominium projects in Lincoln (Riverfront, The Lodge, and Forest Ridge) and one in Woodstock (Deer Park). Lincoln Station Phase I, Forest Ridge and Deer Park contain townhouse units and the interior and exterior design of Forest Ridge and Deer Park incorporate many improvements from the initial design concepts used by Satter.

The Taxpayers argued the assessments were excessive because:

- (1) the Town determined the values by applying a composite value for both land and buildings of \$85 per square foot and the square footage used for units 43 and 72 was 1,592 (which exceeds the actual square footage of 1,352 by 240 square feet) and the square footage used for unit 79 was 2,456 (which exceeds the actual square footage of 2,127 by 329 square feet);
- (2) a different assessment procedure was utilized by the Town at Forest Ridge development where building rates per square foot were applied to determine the values of the buildings and those amounts were then added to the land values which ranged from \$75,000 to \$90,000;

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(3) the interior and exterior design of the units at Forest Ridge is superior to that used at Lincoln Station and the site layout is substantially less dense at Forest Ridge than at Lincoln Station;

(4) the composite values for finished two bedroom units at Forest Ridge are \$89.31 per square foot compared to \$100.07 per square foot at Lincoln Station;

(5) the composite values for finished four and five bedroom units at Forest Ridge range from \$68.89 to \$79.98 per square foot compared to \$98.14 to \$106.25 per square foot for four bedroom at Lincoln Station;

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(6) there is substantial noise and traffic passing the subject properties as a result of being on a main roadway through the development used by occupants at The Lodge when travelling to Loon Mountain and used by Loon Mountain shuttle buses daily during the ski season;

(7) no units at Forest Ridge are located on main roadways, they are set back from noise and traffic, and the rustic setting is far superior to Lincoln Station;

(8) since all two and four bedroom units at Lincoln Station have the same footprint (square footage on the first level), the land values should be the same regardless of the size of the units;

(9) a March 8, 1992 appraisal report prepared by John H. Kelly estimated the value of a Reading unit in Lincoln Station as of April 1, 1989 to be \$170,000;

(10) it is appropriate to assess the Union model units at \$121,550, the amount assessed for the 1,361 square foot comparable units at Forest Ridge; and

(11) the Town has assessed the units at Lincoln Station in an arbitrary and inconsistent manner when compared to the approach used at Forest Ridge.

The Town argued the assessments were proper because:

(1) the development is located a couple of miles from the ski area, one and

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one-half miles from the interstate and in a resort community surrounded by the White Mountain National Forest;

(2) for the 1987 revaluation, sales were used from 1985 to 1986 to establish the value as of April 1, 1987, and during that time period, there was a rapid increase in property values;

(3) the market indicated a time trending of one percent per month for 1985 and two percent per month for 1986;

(4) comparable sales support the assessments;

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(5) to arrive at the size of the units, the Town measured the exterior dimensions of the units by story height and because most have cathedral ceilings, this would account for the difference in square footage of the units;

(6) Forest Ridge is not complete; there were plans for over 400 units for the entire development on 285 acres of land and it is a more low density type of development; ownership of the health club was retained by Satter and the owners pay a fee for the use of the club;

(7) the land residual method was utilized at Forest Ridge because the land site values were more consistent and the units are more consistent in size - Lincoln Station has four bedrooms units next to two bedroom units next to three bedroom units;

(8) when dealing with the replacement cost, you have to go by the exterior square footage rather than floor area; and

(9) the Properties are not disproportionately assessed in relation to other units.

Based on the evidence, we find the correct assessments should be:

<u>Tax Map and Lot</u>	<u>Assessment</u>
29/043 (Levine)	\$121,770
29/079 (Lovezzola)	\$187,875

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29/072 (Dilibero)

\$121,770

These assessments are ordered because the board found that a 10 percent reduction is warranted based on the market evidence that condominiums have decreased in value at a greater rate than values generally in the Town. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality. Estimating market value is not an objective technical determination but rather subject to the whims of the marketplace and to the subjective interpretations of appraisers. The agency's experience, technical

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competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the properties are assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one perfect assessment of a property. Rather, there is a range of acceptable assessments for each property. In weighing all of these factors, it is the board's judgment that a 10 percent reduction is warranted for 1989. "Given all the imponderables in the valuation process, '(j)udgment is the touchstone.'" Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977).

If the taxes have been paid, the amount paid on the values in excess of \$121,770 for Unit #43, \$187,875 for Unit #79 and \$121,770 for Unit #72 shall be refunded with interest at six percent per annum from date paid to refund date.

RSA 76:127-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alan I. and Anita Levine, Robert F. and Nancy J. Lovezzola, Elio and Rita Dilibero, Taxpayers; and Chairman, Selectmen of Lincoln; and Mary Pinkham, Department of Revenue Administration.

Dated: September 8, 1992
Melanie J. Ekstrom, Deputy Clerk

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