

MPL, Inc.

v.

Town of Derry

Docket Nos.: 6724-89, 9006-90 and 11434-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of:

Map & Lot #LandBuildingTotal Assessment

44-5-000\$1,224,000\$1,224,000

1990 assessments of:

Map & Lot #LandBuildingTotal Assessment

44-5-000	\$1,224,000	\$1,224,000	
44-5-24	\$ 60,000	\$ 96,300	\$ 156,300
44-5-34	\$ 60,000	\$ 99,400	\$ 159,400
44-5-41	\$ 60,000	\$ 96,300	\$ 156,300
44-5-44	\$ 60,000	\$ 96,300	\$ 156,300

and 1991 assessments of:

Map & Lot #LandBuildingTotal Assessment

44-5-000	\$1,188,000	\$1,188,000	
44-5-24	\$ 60,000	\$ 96,300	\$ 156,300
44-5-34	\$ 60,000	\$ 99,400	\$ 159,400
44-5-41	\$ 60,000	\$ 96,300	\$ 156,300
44-5-44	\$ 60,000	\$ 96,300	\$ 156,300

Lot 44-5-000 consists of an unimproved parcel of land, approximately 17.0 acres in size with an approval for 34 units, being Phase II of a development known as Hillcrest Village Condominiums (hereafter "Phase II"). The four units appealed in 1990 and 1991 are completed residential units in the Phase I portion of Hillcrest Village Condominiums (hereafter "Units"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

Phase II

The Taxpayer submitted an appraisal report marked as Exhibit TP-4 which need not be reiterated in this Decision but reached the conclusion that the proper market values were: April 1, 1989 - \$500,000; April 1, 1990 - \$350,000; April 1, 1991 - \$300,000.

Units

The Taxpayer submitted an appraisal report marked as Exhibit TP-5 which need not be reiterated in this Decision but reached the conclusion that the proper market values were:

<u>Unit #</u>	<u>4/01/90</u>	<u>4/01/91</u>
24,41,44	\$129,000	\$85,000
34	\$131,000	\$87,000

Phase II

The Town submitted an appraisal report marked as Exhibit TN-A which need not be reiterated in this Decision but reached the conclusion that the proper market values were: April 1, 1989 - \$1,100,000; April 1, 1990 - \$950,000; April 1, 1991 - \$825,000.

Units

The Town submitted an appraisal report marked as Exhibit TN-C to support their contention that the assessments should be reduced \$5,000 per unit. The Town argued no further adjustment was necessary because these units have followed the same decline in value as has occurred throughout the Town.

Board's Rulings

The parties stipulated that the Department of Revenue Administration's equalization ratios represented the general level of assessment within the Town for the three years under appeal. Therefore, the board's findings of market value will be equalized by the appropriate ratio (1989 - 98%; 1990 - 105%; 1991 - 118%).

Phase II - 1989

For 1989, the parties agreed the highest and best use of the property was still for condominium development. The board agrees. From this point of agreement, the parties assumptions and analyses differ significantly. The board adopts neither parties' assumptions and conclusions in their entirety.

Rather, the board weighed the evidence submitted and finds the value per undeveloped site to be \$22,500 or \$765,000 (\$22,500 x 34 sites) for the property.

This assessment is ordered for the following reasons:

- 1) the Taxpayer's sales in their direct comparison approach all had conditions that were less than arms length;
- 2) the property has difficult topography and substantial development costs would have to be incurred to make the sites marketable; and
- 3) despite the Town's analysis, the board finds it doubtful that condominium sites were still demanding a premium relative to single-family lots in 1989.

Phase II - 1990 and 1991

The board agrees with the Taxpayer that, due to the change in the market, the highest and best use of the property in 1990 and 1991 was most likely as development into 21 single family lots. However, the board finds the best evidence of the retail value of single family lots to be \$55,000 for 1990 and \$45,000 for 1991 which was presented by the Town in its Exhibit TN-A.

The Town in its original assessment estimated a 45% reduction in the retail value due to topography and the undeveloped status of the lots. Mr. Sargent, Asset Manager of First Essex and President of its subsidiary, MPL, Inc., testified that the hard and soft costs of getting the project to completion were approximately 55%. Further, the Taxpayer's appraisal, Exhibit TP-4, in the discounted cash flow analysis section, itemizes development expenses in the 40% to 50% range inclusive of site work. Based on this evidence, the board finds the development costs (e.g. site work, discounted value of lots over a reasonable holding period, developer's risk and profit, engineering, overhead, marketing, etc.) are reasonably estimated at 50% the retail value. Therefore, the

property's value is estimated at \$577,500 ($\$55,000 \times .5 \times 21$ lots) for 1990 and \$472,500 ($\$45,000 \times .5 \times 21$ lots) for 1991.

Units

The basic difference between the parties' appraisals is the Taxpayer used foreclosure sales of other units in Hillcrest Village while the Town relied on non-foreclosure sales of units from similar developments.

The sales of foreclosed properties by a bank are not usually "arms-length" due to its need to reduce their loan portfolio within a shorter time than the market norm; consequently, while these sales will affect the market value of those who choose not to sell, they alone do not define the market.

Therefore, the sales of units in the complex do affect the value of the appealed units more than recognized by the Town but do not set value as suggested by the Taxpayer.

In weighing the evidence, the board finds the proper market values for units 24, 41 and 44 are \$135,000 for 1990 and \$120,000 for 1991 and for unit 34 are \$137,000 for 1990 and \$122,000 for 1991. Given the diversity of the evidence presented, the board is unable to derive estimates of value through an exact quantitative analysis. However, the agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b). 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.

Summary

The proper assessments are calculated as follows:

Phase II

Year	Market Value	Ratio	Assessment
1989	\$765,000	.98	\$749,700
1990	\$577,500	1.05	\$606,375
1991	\$472,500	1.18	\$557,550

Units

1990			
Units 24,41,44	\$135,000	1.05	\$141,750
Unit 34	\$137,000	1.05	\$143,850
1991			
Units 24,41,44	\$120,000	1.18	\$141,600
Unit 34	\$122,000	1.18	\$143,950

If the taxes have been paid, the amount paid on the value in excess of the assessments listed above shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter D. Wenger, Esq., Representative for the Taxpayer; James L. Kruse, Esq. and Edmund J. Boutin, Esq., Representatives for the Town of Derry; and Board of Assessors of Derry.

Dated: April 15, 1993

Valerie B. Lanigan, Clerk

0007

MPL, Inc.

v.

Town of Derry

Docket Nos. 6724-89, 9006-90 and 11434-91PT

ORDER

On May 5, 1993, the board of tax and land appeals (board) received a motion for rehearing (motion) from the "Town" relative to the board's decision of April 15, 1993 (decision). An objection to the motion was filed by the "Taxpayer" on May 14, 1993.

The board denies the motion for the following reasons.

1989 Appeal

In its motion, the Town alleges the board's finding of value per-site of \$22,500 is less than both the Taxpayer's evidence of \$26,500 per-site and the Town's evidence of \$32,350 per-site. The Town is mistaken.

The Taxpayer's conclusion of value for the 34 sites was \$500,000 or \$14,700 per-site, not the \$26,500 alleged by the Town in its motion. The board's finding of \$22,500 was not inadvertent. As outlined on page four of the board's decision, it was arrived at by weighing the evidence, especially: (1) the less than arm's length nature of the Taxpayer's comparable sales; (2) the difficult topography and substantial development cost of the sites; and (3) the relative change in the market of condominium sites versus single-family lots.

1990 & 1991 Appeals

The Town states that the board erred in stating on page four of the decision that the highest and best use of the "Property" was as a development into 21, single-family lots, as was found by the Taxpayer. The Town is correct. The Taxpayer's appraiser, John Crafts, in his appraisal report actually assumed the highest and best use of the Property for 1990 and 1991 was as the right to build 34 condominium units. The confusion in the board's finding arises from three segments of the testimony: (1) Mr. Crafts, during his testimony, presented a scenario where 21, single-family lots could be developed if the Property was converted to single-lot ownership rather than condominium form of ownership;

(2) Ken Sergeant, an officer of MPL, Inc., presented testimony based on a scenario of the Property being developed as 16, single-family lots; and (3) the Taxpayer testified in the context of their appraisal about a sale of a comparable property, known as Anna Circle, where the purchaser revised the existing condominium declarations to allow for each unit to have a limited common area so that the properties could be marketed akin to single-family-lot ownership.

However, because the board in the decision found that the retail value of single-family lots was greater than that estimated by the Taxpayer's appraiser, the board concluded the most feasible highest and best use of the Property in 1990 and 1991 was as 21, single-family lots.

Therefore, the board amends its decision on page four, second paragraph, by deleting the first sentence and inserting in its place: "The board finds that due to changes in the market, the highest and best use of the Property in 1990

and 1991 was as a development of 21, single-family lots or 21 equivalent condominium sites with limited common area to be marketed similar to single- family lots."

The board finds that the Town did not present any additional facts or issues of law to warrant a rehearing or any further reconsideration.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing amended decision has been mailed this date, postage prepaid, to Peter D. Wenger, Esq., representative for the Taxpayer; James L. Kruse, Esq. and Edmund J. Boutin, Esq., representatives for the Town of Derry; and the Board of Assessors of Derry.

Date: September 8, 1993

Valerie B. Lanigan, Clerk