

MPL 2, Inc.

v.

Town of Derry

Docket Nos.: 6725-89, 9219-90 and 11433-91PT

DECISION

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

Map & Lot #LandBuildingTotal Assessment

10-10-000\$2,655,000\$2,655,000

the 1990 assessments of:

Map & Lot #LandBuildingTotal Assessment

10-10-000\$2,475,000\$2,475,000

10-10-8\$ 60,000\$ 10,000\$ 70,000

10-10-10\$ 60,000\$ 10,000\$ 70,000

and the 1991 assessments of:

Map & Lot #LandBuildingTotal Assessment

10-10-000\$2,475,000\$2,475,000

10-10-11\$ 60,000\$ 10,000\$ 70,000

10-10-13\$ 60,000\$ 10,000\$ 70,000

Parcel 10-10 consists of Phases III through VI (approximately 70 acres) of a condominium development known as Drew Woods with 59 approved but undeveloped sites in 1989 and 55 in 1990 and 1991. Phases III and IV had the

roads paved and community water and sewer to the sites. Phases V and VI had

the roads roughed in and part of the common leach fields installed. For 1990 and 1991, in addition to the 55 approved sites, Phases III and IV had two sites improved with foundations that were appealed (the Property). 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.

The Taxpayer argued the assessments were excessive because:

(1) the market for detached single family condominiums was saturated by 1989 causing the developer to have to substantially lower the prices and offer financing concessions;

(2) by the end of 1989, the price the developer could receive for the units was less than their development and building costs;

(3) the developer stopped constructing new units by the end of 1989 and the mortgagee foreclosed on the Property in February of 1990; and

(4) the Taxpayer submitted an appraisal (Exhibit TP-1) which need not be reiterated in this Decision but reached a conclusion of market value of:

1989 - \$950,000 for the unimproved 59 sites; 1990 - \$676,948 for 55 unimproved sites and two site improved with foundations; 1991 - \$569,000 for 55 unimproved sites and two sites improved with foundations.

The Town submitted an appraisal report marked as Exhibit TN-B which need not be reiterated in this Decision but reached a conclusion of market value

of: 1989 - \$2,050,000 for 59 unimproved sites; 1990 - \$1,639,000 for 55 unimproved sites and two sites improved with foundations; 1991 - \$1,373,700 for 55 unimproved sites and two sites improved with foundations.

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%).

The board finds the best evidence was submitted by the Taxpayer, and the board adopts its estimates of market value for the appealed property.

The board agrees with the development procedure in the Taxpayer's appraisal, Exhibit TP-1. This procedure recognized:

- 1) the very limited development potential and value of Phases V and VI due to the market and legal hurdles involved in trying to develop those areas;
- 2) there were several unsold units held by both the developer and the mortgagee during the three years under appeal;
- 3) the bank had foreclosed on some previously marketed units; and
- 4) the development potential of Phases III and IV were substantially reduced due to the general over-building of condominiums, the slowed economy and the marketing difficulties of the project.

The board places little credence in the Town's estimates of values because the Town's assumption that the Property continued to have high potential for continued single family condominium development ignored the

general marketing and financial difficulties with the project and the type of development, especially for 1990 and 1991.

Summary

The proper assessments are calculated as follows:

1989

Map/Lot	Market Value	Ratio	Assessment
10-10	\$950,000	.98	\$931,000

1990

Map/Lot	Market Value	Ratio	Assessment
10-10	\$633,898	1.05	\$665,600
10-10-8	\$ 21,525	1.05	\$ 22,600
10-10-10	\$ 21,525	1.05	\$ 22,600

1991

Map/Lot	Market Value	Ratio	Assessment
10-10	\$530,000	1.18	\$625,400
10-10-11	\$ 19,500	1.18	\$ 23,000
10-10-13	\$ 19,500	1.18	\$ 23,000

If the taxes have been paid, the amounts paid on the values in excess of those 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

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Docket Nos.: 6725-89, 9219-90 and 11433-91PT

ORDER

On April 15, 1993, the board issued a decision in this appeal (decision). The "Town" moved for rehearing, asserting the "Taxpayer's" appraisal report should not have been considered in arriving at the board's 1989 ordered assessment. An objection to the motion was filed by the Taxpayer on May 14, 1993. On July 9, 1993, the board granted, in part, the Town's motion and held a rehearing on August 3, 1993 on the issue raised on page 5, item 2a, of the Town's motion.

This order addresses the following:

- 1) For the 1989 appeal, the board grants the Town's motion for rehearing and reconsideration and amends its decision in Section I of this order; and
- 2) For the 1990 and 1991 appeals, the board denies the motion, affirms its rulings in the decision, and further clarifies the decision in Section II of this order.

Section I - 1989 Appeal

The Town's primary argument in its rehearing motion was the board improperly accepted the Taxpayer's appraisal in which an incorrect reliance

was made on market data and the foreclosure of the subject "Property" that occurred subsequent to the 1989 assessment date.

The board's rehearing on August 3, 1993 focused on what market data the Taxpayer relied upon for making certain assumptions in its 1989 estimate of value. The board finds from the testimony at the rehearing, and a review of the evidence presented at the initial hearing, that the Taxpayer's estimate of value could potentially have been biased by the foreclosure of the subject Property in 1990, and by certain market assumptions that were made for 1990 and 1991 that, while perhaps appropriate for 1990 and 1991, were not entirely appropriate for 1989. The board rescinds its finding in the decision on page 3 which states, "the board adopts the Taxpayer's estimates of market value" as those estimates pertain to the 1989 tax year. The board continues to adopt the Taxpayer's estimates of market value for the 1990 and 1991 tax years as outlined in the decision and as Section II will further elaborate on.

The board rules that the proper 1989 market value of the Property should be \$1,770,000, which equates to a proper assessment of \$1,734,600 by applying the 1989 equalization ratio of 98% as stipulated to by the parties. The simple calculation that the board performed in arriving at this assessment was an assumption of a retail value of \$60,000 per-site, discounted by 50% for anticipated development and marketing costs, multiplied by the 59 sites. In arriving at this simple calculation, however, the board considered and weighed many factors that were presented by both parties including, but not exclusively, the following:

- 1) The Taxpayer's purchase of the Property for approximately \$30,000 per-site prior to any development in 1986;

- 2) The market data that would have existed as of April 1, 1989 as to a leveling off of the demand for this type of project (the board rejects that there was conclusive evidence, as of April 1, 1989, of a strong decline in the real estate market);
- 3) Reviewing both the Town's extraction method for estimated retail site costs and the Taxpayer's methodology of estimating retail site costs, the board finds on balance that a \$60,000 retail site value is reasonable;
- 4) The board reviewed both parties' discounted cash flow estimates of market value and found for 1989 that both estimates included various incorrect assumptions. Specifically, the board finds the Town assumed too high a site value and too short an absorption rate. The Taxpayer, on the other hand, assumed too low a retail site value and, as an alternative, considered a bulk sale of phases five and six at the end of the third year of a six-year marketing period; and
- 5) The board finds that recalculating either parties' discounted cash flows, assuming reasonable site values, absorption rates, and expenses (both parties were fairly consistent in their percentages or flat amounts of expenses), supports a market value estimate of \$1,770,000.

Section II - 1990 and 1991

As stated above, the board denies the Taxpayer's rehearing motion and affirms the portions of the decision pertaining to the 1990 and 1991 tax years.

Further, the board would respond to several of the Town's arguments relating to its motion for rehearing for those two tax years.

The board finds that while reassessment firms may be governed by department of revenue administration's rules Rev 600, the board can look at market data that occurs subsequent to an effective assessment date as well as market data occurring prior to the effective date. The importance, however, is that in analyzing any market data that occurred either before or after a specific assessment date, proper adjustments must be made for market trends and conditions and for "significant events" that may have occurred relative to the specific property being appraised. Such "significant events" would be anything that would affect the specific property in a manner differently than the effects of general market conditions. The Town argued that it would be improper for the board to consider such subsequent market data as it would give an advantage to the Taxpayer to have such market data available in support of a lower assessment that assessors did not have available as of the assessment date. While there is always the potential risk for that to occur, if proper adjustments are made, a reasonable estimate of value can be derived from such sales. The reverse argument could have been made by the taxpayers in the mid-1980's when the market was rapidly appreciating. Neither are persuasive, however, because the important issue is not whether sales prior to or subsequent to a certain date are used, but rather, how do those sales relate to the assessment date under consideration and are proper adjustments made to arrive at the correct value.

The Town argued that the board failed to disregard the Taxpayer's sales S-1 through S-3 as it had in the related Hillcrest case (MPL Inc. v. Town of Derry, Docket Nos.: 6724-89, 9006-90, and 11434-91PT). While it is true that the board did not specifically reject these sales, several facts differentiate this appeal from the Hillcrest appeal. First, the Taxpayer's appraisal on page 143 (exhibit TP-1) stated that the development procedure was given more weight than the direct sales comparison for 1990 while the reverse was true in 1991. However, the board finds that anyone anticipating purchasing this Property in 1991 would not only be fighting the general market trend against condominiums and the stigma attached to a foreclosed property, but it would also be dealing with a condominium-conversion deadline of the undeveloped phases of September 9, 1992, as opposed to a two-year later conversion deadline in the Hillcrest case. Therefore, in 1991, this Property was a substantially riskier investment for that reason than the Hillcrest property. (The board notes that subsequent to the 1991 tax year, the Taxpayer obtained the necessary two-thirds vote of the association, at a cost, to continue phases three and four for a five-year extension. Otherwise, the land would have been converted to common land.)

In summary, the board finds that the 1990 and 1991 values as found in the decision are proper given the market data and significant events that had occurred for those two tax years. The board realizes that the revised decision for 1989 contrasts with the findings for the 1990 and 1991 tax years. However, the board finds, based on the evidence, the market value for this

type of property dropped dramatically from 1989 to 1990 and 1991 for many of the reasons stated in this order, the decision, and the Taxpayer's appraisal as it relates to the 1990 and 1991 tax years.

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:

Valerie B. Lanigan, Clerk

MPL 2 Inc.

v.

Town of Derry

Docket No.: 6725-89

ORDER

The board of tax and land appeals (board) received from the Town a Motion for Rehearing (motion) on May 5, 1993 raising several issues.

The Taxpayer filed an objection to the motion on May 14, 1993.

The board grants, in part, the motion for rehearing limited to the issue raised in the motion on page 5, item 2a. The rehearing is scheduled for August 3, 1993 at 9:00 a.m. The Taxpayer's witness, Mr. Crafts, should be available to present further testimony and answer board questions related to the estimate of value for the 1989 tax year.

Subsequent to the rehearing, the board will issue an order dealing with the Town's motion in its entirety.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Dated:

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Valerie B. Lanigan, Clerk