

David A. Tober

v.

Town of Stratham

Docket No.: 8572-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$187,200 (land \$30,000; buildings \$157,200) on a condominium unit in The Peninsula. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was 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 assessment was excessive because:

- (1) the building assessment was increased by \$7,500 when this increase was not made to all units (An exhibit showing the assessments on the Property and other units was submitted.); and
- (2) the land assessment exceeded the prices of lots sold at auction in 1990.

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The Town argued the assessment was proper because:

- 1) it was arrived at using the same methodology used throughout the Town, which involved the cost approach with review based on information from local builders and with comparison of sales (The Town submitted an assessment sheet, showing consistent assessments.);
- 2) the condominium assessments were based on the unit size;
- 3) a downward adjustment was made in 1992 to reflect market downturn;
- 4) the land assessment was based on the sale of the entire condominium site, as if vacant, with this value then allocated among the units;
- 5) the additional \$7,500 was due to the completion of the Property, which in 1987 was only 85% complete; and
- 6) other assessments that did not receive the \$7,500 increase were corrected for 1991.

Board's Rulings

Based on the evidence, the board finds the correct assessment to be \$168,480. The board takes official notice of the sales information from Wilson v. Town of Stratham, Docket Nos. 8573-90 and 11024-91PT, and applies the same analysis here.

Assessments must be related to and based on market value. See RSA 75:1. While the Town presented evidence of consistent assessments, it did not present any market data. The Taxpayer also failed to present market data, but the taxpayers

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in Wilson v. Stratham, Docket No. 8573-90 presented evidence that the board applies here. The Wilsons' market data, even when adjusted for time and other factors, supports a finding of over assessment. Below is a

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summary of that data when compared to assessments. The sale of unit 5 was not used because it was unreliable given the seller and the resulting sales price.

Unit 77 (Model A - 1,950 square feet)

Sold: \$165,500 on April 12, 1991

Assessments: 1990 = \$187,200; 1991 = \$179,340

Assessment-to-sales ratios: 1990 = 1.05
(using time-adjusted price of \$178,740 {+8%})

1991 = 1.09

Unit 17 (Model C - 1,996 square feet)

Sold: \$160,000 on November 9, 1990

Assessments: 1990 = \$183,000; 1991 = \$175,540

Assessment-to-sales ratios: 1990 = 1.09
(using time-adjusted price of \$168,000 {+5%})

1991 = 1.13
(using time-adjusted price of \$155,200 {-3%})

	<u>Mean & Median</u>	<u>Absolute Difference</u>	<u>Percent Difference</u> (sales' ratios to Town ratios)
<u>1990:</u>	1.07	$1.07 - .86 = .21$	25%
<u>1991:</u>	1.11	$1.11 - .93 = .18$	20%

The above shows the assessments on these condominiums were excessive compared to the market. Further, the Property's equalized value, i.e., the assessment divided by the ratio, clearly exceeded the time-adjusted sales price of

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unit 77, also a model-A unit. The abatement remedies this discrepancy.

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Before Abatement:

	<u>Property's Equalized Value</u>	<u>Unit 77 time-adjusted price</u>	<u>Difference</u>
<u>1990:</u>	\$217,675	\$178,740	\$38,935

After Abatement:

	<u>Property's Equalized Value</u>	<u>Unit 77 time-adjusted price</u>	<u>Difference</u>
<u>1990:</u>	\$195,910	\$178,740	\$17,170

The assessment was not reduced to the time-adjusted sales because some factoring was required due to the issues raised by the Town, the Wilson case, about the developer's circumstances. However, there was enough evidence to give these sales weight, especially in the absence of any other market evidence. Finally, even if the developer was in bad financial circumstances, the availability of the developer's units at reduced prices would affect the other values in the development.

If the taxes have been paid, the amount paid on the value in excess of \$168,480 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. This decision only applies to 1990.

SO ORDERED.

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George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David A. Tober, Taxpayer; and Chairman, Selectmen of Stratham.

Dated: September 14, 1993

Valerie B. Lanigan, Clerk

0009 for 0005

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ORDER

This order responds to the "Town's" rehearing motion. The motion is denied because the motion does not state any error in fact or in law. See RSA 541:3,4.

Concerning the assessment arrived at by the board, the board finds the Town

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did not demonstrate any error. The motion attempts to downplay the importance of the property's market value. It is essential that a taxpayer establish a property's market value and then this market value would be compared to the general level of assessments. See, Appeal of NET Realty Holding Trust, 128, N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. at 217-18. Furthermore, RSA 75:1 -- the standard by which assessments are to be made -- specifically requires that assessments be based on and related to market value. E.g., Bemis Brother Bag Co. v. Claremont, 98 N.H. 446, 450 (1954); Brock v. Farmington, 98 N.H. 275, 277 (1953). As stated in the decision, the board concluded the "Taxpayer" had done this, and when the Taxpayer's market data was compared to the general level

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of assessment, the board concluded an abatement was warranted. The Town erred in its rehearing motion when it argued the board should have denied the appeal because the property's assessment was proportional to other condominium assessments. Proportionality within a class is not the test in New Hampshire. See Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 204 (1899) ("Each taxpayer is entitled to have his property valued for taxation by the same standard as that of

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other taxpayers."); see also, Appeal of Town of Sunapee, 126 N.H. at 219 ("It is impermissible to maintain a class of real estate that is assessed at a higher level than other real estate ***. It is therefore, irrelevant that all assessments within one such class may be uniform.").

The Town submitted new evidence (a spreadsheet with assessment and sales) with this motion and argued it demonstrated the assessments in the development were in line with the market. This evidence was not submitted at the hearing and cannot now be considered. Tax 201.37(e).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to David A. Tober; and Chairman, Selectmen of Stratham.

Dated: October 21, 1993

Valerie B. Lanigan, Clerk

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This order responds to the "Town's" rehearing motion. The motion is denied because the motion does not state any error in fact or in law. See RSA 541:3,4.

Concerning the assessment arrived at by the board, the board finds the Town did not demonstrate any error. The motion attempts to downplay the importance of the property's market value. It is essential that a taxpayer establish a property's market value and then this market value would be compared to the general level of assessments. See, Appeal of NET Realty Holding Trust, 128, N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. at 217-18. Furthermore, RSA 75:1 -- the standard by

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Valerie B. Lanigan, Clerk

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