

Hugh P. and Suzanne E. Wilson  
and Suzanne E. Wilson, Revocable Trust of 1990

v.

Town of Stratham

Docket No.: 8573-90 and 11025-91 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$183,000 (land \$30,000; building \$153,000) and 1991 assessment of \$175,540 (land \$30,000; building \$145,540) on a condominium unit in The Peninsula. For the reasons stated below, the appeal for abatements are granted.

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 argued the assessments were excessive because:  
(1) the square-foot values placed on condominiums were excessive compared to the values used on single-family homes (The Taxpayers submitted an exhibit to support this argument.);

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(2) the Town failed to bring the assessments on single-family homes up despite the rising values, resulting in higher taxes on condominiums; and

(3) three 1990 sales demonstrate overvaluation.

The Taxpayers stated they were not contesting the land assessments.

The Town argued the assessments were proper because:

(1) they were 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 to sales (An exhibit showing consistent condominium assessments was admitted.);

(2) the Property has some amenity value;

(3) the Taxpayers' three sales may not have been market sales because of issues concerning the developer and the bank and questions about the circumstances surrounding the sales;

(4) the Taxpayers' square-foot calculations were in error;

(5) the Town's equalization ratio and coefficient of dispersion demonstrate assessment equity; and

(6) based on its review of sales and assessments, the value of high-end condominiums did not decline faster than single-family homes, especially since these are owner-occupied units and not investor-owned units.

Based on the evidence, we find the correct assessment should be \$164,700 for 1990 and \$157,990 for 1991.



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

	<u>Mean &amp; 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 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 prices. The abatement remedies this discrepancy.

Before Abatement:

	<u>Property's Equalized Value</u>	<u>Unit 17 time-adjusted price</u>	<u>Difference</u>
<u>1990:</u>	\$212,790	\$168,000	\$44,790
<u>1991:</u>	\$188,750	\$155,200	\$33,550

After Abatement:

	<u>Property's Equalized Value</u>	<u>Unit 17 time-adjusted price</u>	<u>Difference</u>
<u>1990:</u>	\$191,510	\$168,000	\$23,510

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<u>1991:</u>	\$170,000	\$155,200	\$14,800
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These abatements were not reduced to the time-adjusted sales prices because some factoring was required due to the issues raised by the Town 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.

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Pursuant to RSA 76:16-a (Supp. 1991), this decision shall be applied to tax years 1990, 1991, 1992 and 1993. If the taxes have been paid, the amount paid on the value in excess of the assessments stated 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

\_\_\_\_\_  
George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

#### CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Hugh P. and Suzanne E. Wilson, Trustees and Taxpayers; and Chairman, Selectmen of Stratham.

Dated: September 8, 1993

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Valerie B. Lanigan, Clerk

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**ORDER**

This order responds to the "Town's" rehearing motion. To the extent the motion asserted the board erred, in reaching a proper assessment, the motion is denied because the motion does not state any error in fact or in law. See RSA 541:3,4. To the extent the motion claims the board erred in ordering an abatement for 1993, the board grants the rehearing motion subject to the discussion below.

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);

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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,

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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 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 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 assessments and sales) with this motion and argued it demonstrated the assessments in the

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development were in line with the market. This evidence was not submitted at the hearing and cannot now be considered. Tax 201.37(e).

Concerning the issue of a 1993 assessment, the Town is correct that the board lacks authority to issue an order at this time for 1993. However, the board directs the Town to RSA 76:17-c, as recently amended to apply to all tax bills mailed after April 1, 1991 (HB 645 1992, passed 1993) RSA 76:17-c requires the Town to use the ordered assessment with good faith adjustments under RSA 75:8, until the Town undergoes a general revaluation. However, since a 1993 tax

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bill has not yet been mailed, it was premature for the board to include the 1993 tax year.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Hugh P. and Suzanne E. Wilson, Trustees and Taxpayers; and Chairman, Selectmen of Stratham.

Dated: October 21, 1993  
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Valerie B. Lanigan, Clerk