

**Ronald R. Pombriant**

**v.**

**Town of Bartlett**

**Docket Nos.: 8670-90, 10922-91PT and 8714-90**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of \$112,300 (land \$13,500; buildings \$98,800) on a unit at Brookview (the Brookview Unit) and the 1990 assessment of \$61,000 on a unit at Four Seasons (the Seasons Unit). For the reasons stated below, the appeals for abatement are 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden.

The Taxpayer argued the assessments on the Brookview Unit were excessive because:

- (1) condominiums were assessed town-wide at a higher percentage of market value than the generally prevailing percentage;
- (2) the Town increased the assessment due to assessing the association's land to the units;

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(3) the Taxpayer bought the unit in April 1990 for \$127,000 and sold it November 1991 for \$120,000;

(4) the equalized value far exceeded the market value;

(6) the assessments were excessive when compared to comparable sales;

(7) they exceeded the \$133,900 for the 1993 100% assessment; and

(8) the assessments should be \$64,770.

The Taxpayer argued the assessment on the Seasons Unit was excessive because:

(1) condominiums were assessed town-wide at a higher percentage of market value than the generally prevailing percentage;

(2) the Town increased the assessment due to assessing the association's land to the units;

(3) the equalized value far exceeded the market value;

(4) the Taxpayer bought the property at foreclosure October 1990 for \$56,000 and sold it July 1991 for \$63,830;

(5) the Town taxed both units and the association for common land;

(6) the assessment was excessive when compared to comparable sales;

(7) a bank appraisal estimated a July 1990 value of \$83,000;

(8) it exceeded the \$71,300 for the 1993 100% assessment; and

(9) the assessment should be \$38,250.

The Town argued the assessments were proper because:

(1) granting the Taxpayer's request and using of the "DRA's" ratio would be inequitable; and

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(2) the Town took corrective action in 1993.

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Board's Rulings

Based on the evidence, we find the correct assessments should be: Brookview Unit -- \$79,050 and Seasons Unit -- \$45,720.

The following summarizes the evidence.

**BROOKVIEW**

assessment	\$112,300
equalized value	\$220,195 (assessment ÷ by equalization ratio)

April 1990 purchase	\$122,000
November 1991 sale	\$120,000

April 1990 purchase adjusted for condition of sale  
 $\$127,000 \times 1.25 = \$158,750$

November 1991 sale time adjusted to April 1990  
 $\$120,000 \times 1.75 = \$150,000$

**SEASONS**

assessment	\$ 61,000
equalized value	\$119,610

October 1990 purchase	\$56,000
July 1991 sale	\$63,830

July 1990 appraisal \$83,000

October 1990 purchase adjusted for foreclosure and time to April 1, 1990  
 $\$56,000 \times 1.30$  (foreclosure)  $\times 1.12$  (time) = \$81,535

July 1991 sale adjusted for time (to April 1, 1990)  
 $\$63,830 \times 1.25 = \$79,790$

July 1990 appraisal adjusted for time (to April 1, 1990)  
 $\$83,000 \times 1.08 = \$89,640$

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**RATIOS** (All ratios median ratios.)

DRA equalization ratio (overall ratios)	1990 1991	51% 63%
Brookview	1990 1991	87% 90.5%

Note: In 1990, only one sale, which was the Taxpayer's.  
In 1991, only two sales, one of which was the Taxpayer's.

Seasons	1990 1991	65.5% 87%
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**RATIOS -- COMPARISON OF CONDOMINIUM RATIOS TO GENERAL LEVEL TO ASSESSMENT**

		Condos		DRA		Difference
1990	Seasons	65.5	-	51	=	14.5
	Brookview	87	-	51	=	36
1991	Seasons	87	-	63	=	24
	Brookview	90.5	- 63 =			27.5

The evidence demonstrates overassessment in two ways: 1) comparing the Taxpayer's adjusted purchases and sales with the equalized values; and 2) comparing the ratios on the properties with the DRA ratios.

Concerning the sales prices, under RSA 75:1 assessments must be based on relative market value. See Brock v. Farmington, 98 N.H. 275, 277 (1953). Under RSA 75:8, assessments must be annually reviewed by municipalities and adjusted as warranted, especially where a class of properties has changed in value differently from the general value change. In these cases, the ratios show that while the general real estate market was falling, the condominium market was falling at an even faster rate. Thus, the assessments here should have been adjusted.

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The Town argued that even though the ratios for condominiums were higher than the DRA ratios, no adjustments were warranted because all condominiums were similarly assessed. First, assessments must be proportional town-wide on all property types. Thus, assessing any class of property higher than other properties, as shown by the general level of assessment, is not permitted. See Appeal of Andrews, 136 N.H. 61, 64 (1992); Amoskeag Mfg. Co. v. City of Manchester, 70 N.H. 200, 205 (1899). Second, absent other proof, the DRA ratio must be assumed to represent the general level of assessment. Appeal of the City of Nashua, \_\_ N.H. \_\_, slip op. at 5 (March 3, 1994). Third, the board must apply the exact ratio without any range or deviation. See Appeal of Andrews, 136 N.H. at 64-65. Given the facts here and the above-cited law, abatements must be given here.

Concerning the sales and the appraisal, the board views these as the best presented evidence of market value. We have some concerns about the sales and the appraisal. The Taxpayer's evidence of sales prices was some evidence of the Properties' market values, but they were not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980); see also Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988) (where it is demonstrated that a sale was an arms-length market sale, the sales price is one of the "best indicators of the property's value").

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**COMPARISON ON POSSIBLE VALUES**

Brookview

Adjusted sales	\$158,750
	\$150,000

Reduced assessment (-15% due to ratio analysis)	
$\$117,300 \times .85 =$	\$95,455

Equalized adjusted assessment	\$187,165
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Seasons

Adjusted sale	\$81,575
	\$79,790

Adjusted appraisal	\$89,640
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Reduced assessment (-15% due to ratio analysis)	
$\$61,000 \times .85 =$	\$51,850

Equalized adjusted assessment	\$101,665
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**VALUE CONCLUSIONS**

The board concludes the best evidence of value for the Brookview Unit was the mean/median (\$155,000) of the adjusted prices (\$158,750 and \$150,000). This \$155,000 was then reduced by 51% (the 1990 equalization ratio), resulting in the \$79,050 assessment.

The board concludes the best evidence of value for the Seasons Unit was the adjusted appraisal (\$89,640). This \$89,640 value was then reduced by 51% resulting in a \$45,720 assessment. The above figures are consistent with the evidence and law, both summarized above.

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### **FEES**

The Taxpayer filed two appeals for 1990 when he owned both properties and paid the year's taxes on both. Thus, the board finds the Taxpayer incorrectly paid two filing fees. The board shall refund the \$40 filing fee. The board denies the Taxpayer's request for an order requiring the Town to pay the additional \$80 fee.

### **REFUND**

If the taxes for 1990 and 1991 have been paid on the Brookview Unit, the amount paid on the value in excess of \$79,050 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992. Because the Town revalued the unit for 1993, this decision does not apply to 1993.

If the taxes for 1990 have been paid on the Seasons Unit, the amount paid on the value in excess of \$45,720 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991 and 1992. Because the Town revalued the unit for 1993, this decision does not apply to 1993.

### **REHEARING**

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA

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541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

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 Ronald R. Pombriant, Taxpayer; and Chairman, Selectmen of Bartlett.

Dated: May 31, 1994

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Valerie B. Lanigan, Clerk