

Dennis P. and Jane H. Crimmins

v.

Town of Jackson

Docket No.: 8793-90

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$95,500 (land, \$58,000; buildings, \$37,500) on their real estate consisting of condominium unit 4-A of the Mt. Washington Condominium (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was 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 they were disproportionately taxed.

The Taxpayers argued the assessment was excessive because:

1) the Taxpayers purchased the Property in October, 1989 for \$79,000 and by

April of 1990, had declined in value to only \$70,000;

2) unit 4-A is one of the smallest units of the nine condominiums with 6.72 percent undivided interest in the common areas;

3) the Town's methodology of assigning one "land value" of \$58,000 to all the units regardless of size ignores the condominium's declaration which assigns different percentages of undivided interest based on the size of the units; and

4) based on the Taxpayers' 6.72 percent of undivided interest, the land value should only be \$35,078.

The Town submitted sales analyses of nearby condominium complexes (Ellis River and Mt. Jefferson Condominiums) in support of the \$58,000 land value determination. The Town argued the Taxpayers' "one sale does not make a market." Rather the general market of similar properties in the area must be considered during a mass revaluation.

The Town argued the percentage of undivided interest in the common area "has more to do with the allocation of expenses due in the upkeep and maintenance of the common areas," than with determining market value.

Based on the evidence, we find the correct assessment should be \$85,500 (land \$48,000; building \$37,500).

In arriving at this decision, the board weighs the conflicting facts and assertions of the parties balanced with the board's own experience and expertise. See RSA 541-A:18, V(b) (an agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence).

First, the basis for determining a taxpayers proper share of the tax burden is by estimating the market value of their property (RSA 75:1). If a condominium's percentage interest in the common area is recognized by the market, then it would be a factor in determining the proper assessment.

However, no evidence was submitted in this case that draws a direct correlation between percentage of interest and the market value of the "land."

Generally it has been the board's experience that in the marketing of condominiums if all the amenities and access to the common areas (e.g., view proximity to common services and facilities, etc.) are similar, there will be little variation between the sales of the units that is not adequately accounted for by the differing building sizes and costs. In fact, sometimes, if the market is sensitive enough, there will be a slightly less "land value" recognized with the larger units than with the smaller units for two reasons.

1) If the percentage interest of the common area is based upon relative size of the unit and is used as a basis for allocating condominium fees, the higher annual fees to be assumed by a prospective buyer of a larger unit will be a slight deterrent. 2) Developers of condominium projects, attempting to market differing sized units in a certain price range, will frequently allocate slightly more of the site hard and soft costs (i.e., all non-building costs) to the smaller units and vice versa so as to keep all the units within that marketable price range.

However, with that having been stated, the balance of the facts

warrant an abatement.

This appeal is for the 1990 tax year. The sales presented by the Town occurred in 1987 and 1988 when the market was better than in 1990. The

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Taxpayers' sale occurred in October of 1989 much closer to the assessment date. While the Town is correct that one sale does not make a market, it is still some indication of market value and thus is given some weight.

Further, while neither party focused on it, the board notes that the Taxpayers' unit consists of partially overlapping portions of the first floor and the ground floor of the building. It appears from the floor plans and photographs submitted by the parties that other units occupy the first and second floor of the building. Again it is the board's experience that above ground living space is generally more desirable than partially below ground space (i.e., walk out finished basements).

Therefore for the above stated reasons the board rules the assessment should be reduced \$10,000 for the 1990 tax year.

If the taxes have been paid, the amount paid on the value in excess of \$85,500 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

I certify that copies of the foregoing have been mailed this date, postage prepaid, to Dennis and Jane Crimmins, Taxpayers; and Chairman, Selectmen of Jackson.

Dated: December 5, 1991

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Melanie J. Ekstrom, Deputy Clerk