

**Yankee Development Association**

**v.**

**Town of Durham**

**Docket No.: 9346-90**

**DECISION**

The "Taxpayer" appeals pursuant to RSA 76:16-a, the "Town's" 1990 assessment of a total of \$2,462,320 on a student-housing condominium complex consisting of 89 units located at 14-16 Strafford Avenue (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, after reviewing the written submittals and due to the complexity of this case, the board scheduled a hearing on October 13, 1993. The board has reviewed the written submittals and the evidence at the hearing and issues the following decision. 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.

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The Taxpayer argued the assessment was excessive because:

- 1) the Property was purchased for \$2,200,000 in July, 1988, and converted to condominium status in September, 1988;
- 2) only one unit sold in March, 1989, but the Property continued to be rented as student apartments;
- 3) the condominium status was rescinded in March, 1989 due to the declining market;
- 4) the Property never operated as a condominium complex and has been solely utilized as rental apartments for students;
- 5) Eastern Appraisal Services estimated a \$900,000-\$1,000,000 fair market value as of December, 1991; and
- 6) a September, 1993 appraisal prepared for the Town by MMC estimated a \$1,300,000 fair market value.

The Town argued the assessment was proper because:

- 1) the Property was assessed as individual condominium units and its status as condominiums was changed to two apartment buildings in 1992;
- 3) the March, 1989 sale of unit B-18 for \$37,000 was used as the basis of assessing all other condominium units;
- 4) the Town reduced the original assessment of each unit by 30% based on poor economic conditions;
- 5) Unit 18 was repurchased by the Taxpayer in 1991;
- 6) an appraisal estimated a \$1,500,000 fair market value as apartment buildings as of April 1, 1992;

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7) a September, 1993 appraisal estimated a \$1,300,000 fair market value for tax years 1990, 1991, and 1992; and

8) the Town disagrees with its appraiser's September, 1993 estimate of value arguing that since the condominium status was not rescinded prior to April 1, 1991, the Property should be assessed at its highest and best use.

**Board's Rulings**

Based on the evidence, the board finds the proper total assessment to be \$1,541,790. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building or the individual units, and the Town shall make this allocation in accordance with its assessing practices.)

In arriving at this conclusion, the board finds as follows:

1) Both parties agreed that, due to the uniqueness of the Property, there were no directly comparable sales other than the subject's sale of Unit 18 in March of 1989. The Taxpayer determined in 1989 that its attempt to convert the Property to condominiums was "doomed to failure" and upon repurchasing Unit 18 the condominium status was rescinded.

2) Both apartment complexes and garden-style apartment/condominium units have

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experienced a generally declining market trend for these types of property.

The agency's experience, technical competence, and specialized knowledge may

be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

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3) The highest and best use of the Property as of April 1, 1990 is as income producing student housing with the option to sell units as condominiums. The Town argued that the highest and best use was as condominiums solely because of the Taxpayer's filing of the condominium declaration in September, 1988. This assumption was speculative given the poor market for low-priced condominiums in 1990 and the lack of comparable sales.

"The (highest and best use) must be a probable use and not a highly speculative one. There must be a demand for the use either in the present or in the near future."  
International Association of Assessing Officers, Property Assessment Valuation, 1977.

4) Upon a review of the appraisal reports submitted, the Town's September, 1993 report which arrives at a value based on the income approach and a highest and best use as income producing student housing, is reasonable.

5) As the appraiser's estimate of value is for the Property solely as a student housing complex, the value for the option of selling units as condominiums must be added. The board estimates an additional \$1,000 of value per unit for the option to sell as condominiums. Given all the imponderables in the valuation process, "{j} judgment is the touchstone". Public Service Co. v. Town of Ashland, 117 N.H. 635, 639. This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 64, 68 (1975).

5) A reasonable assessment is derived by adding the \$1,300,000 income estimate to the \$89,000 condominium option estimate for a fair market value of \$1,389,000 and an equalized value of \$1,541,790.

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If the taxes have been paid, the amount paid on the value in excess of \$1,541,790 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Lynn D. Morse, Esquire, counsel for Yankee Development Association, Taxpayer; and Chairman, Selectmen of Durham.

Dated: November 22, 1993

0008/0005

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Valerie B. Lanigan, Clerk