

Timberwood Condominiums

v.

Town of Goffstown

Docket Nos.: 9347-90 thru 9390-90 and 9507-90

Docket Nos.: 11228-91PT thru 11268-91PT
11297-91PT, 11373-91PT, 11384-91PT, 11385-91PT, 11391-91PT

DECISION

This decision pertains to forty-five 1990 appeals filed on ninety-one condominium units and forty-seven 1991 appeals filed on sixty-eight condominium units at a development known as Timberwood Condominiums. The units are garden-style condominiums with 650 to 980 square feet. The following list summarizes the units and assessments under appeal (collectively "Taxpayers").

<u>Taxpayer</u>	<u>Docket Nos.:</u>	<u>Unit #</u>
<u>Assessment</u>		

Elizabeth Adams	9371-90	11228-91	3-302	\$77,000
Paul and Marie Agrell	9376-90		5-102	\$78,000
Flora A. and Albert A. Bovyn, III	9365-90	11230-91	3-106	\$80,800
John and Frances Callanan	9351-90	11231-91	1-206	\$80,800
Paul Carl and Deborah Berwick	9375-90	11232-91	3-307	\$77,000
Jonathan F. Crary	9364-90	11233-91	3-105	\$80,800
Lawrence Collins	9360-90		2-207	\$78,000
Robert P. Desaulniers	9354-90	11234-91	2-101	\$78,000
Paul and Claire Desgagne	9369-90	11235-91	3-204	\$80,800
Betty E. Dufoe	9361-90	11237-91	2-301	\$77,000
Shirley A. Duggen (Gordon)	9362-90	11243-91	2-307	\$77,000
Christine and William Durocher	9387-90	11238-91	11-302	\$77,000
Nancy Faro	9380-90	11239-91	5-203	\$80,800
Judith Ferguson	9357-90	11692-91	2-203	\$80,800
Elizabeth and Joseph Fichera, Jr.	9379-90	11240-91	5-201	\$78,000
Robin and David Flanagan	9352-90		1-207	\$78,000
Deborah and Richard Fortin	9353-90		1-307	\$80,900
Mary and Joseph Gillooly, Sr.	9348-90	11373-91	1-103	\$80,800
Nancy and Glendon Harmon	9386-90		11-206	\$80,800
Jill Healey	9371-90	11244-91	3-206	\$80,800
Bernice Holz	9347-90	11245-91	1-102	\$78,000
Lynn Marie Hummel	9389-90	11246-91	12-405	\$79,800
Margaret Kearns	9349-90	11247-91	1-106	\$80,800
John and Kathleen Lingley	9377-90	11248-91	5-103	\$80,800
Barry MacKinnon	9384-90	11251-91	5-307	\$77,000
Mary Ellen Maltais	9350-90	11252-91	1-202	\$78,000
Jayne McCabe	9378-90	11249-91	5-107	\$78,000
Michael and Karen McCormack	9388-90	11253-91	11-304	\$79,800

Connie and John McCoy	9383-90	11250-91	5-305	\$79,800
Pamela McGettigan (Moriarty)	9373-90	11257-91	3-303	\$79,800
Deidre McNamara	9382-90	11385-91	5-303	\$79,800
John Meyer	9366-90	11255-91	3-108	\$78,000
Lorraine Miller	9370-90		3-205	\$80,800
Janie Pappalardo	9363-90		3-101	\$78,000
Arthur and Anita Pavidis	9368-90	11259-91	3-203	\$80,800
Kenneth Rhodes	9367-90	11260-91	3-302	\$78,000
Tekla Seibert	9359-90	11261-91	2-206	\$80,800
Cecile and Joanne Simard	9381-90	11262-91	5-207	\$78,000
Nancy Surette	9355-90	11263-91	2-104	\$69,500
Lisa and Arthur Thibault, III	9374-90	11265-91	3-306	\$79,800
Timberwood Development Trust	9390-90	11297-91	1-305	\$79,800
		11297-91	2-102	\$78,000
		11297-91	2-108	\$78,000
			3-104	\$60,100
		11297-91	5-104	\$68,200
		11297-91	5-202	\$77,700
		11297-91	5-302	\$77,000
		11297-91	5-308	\$77,000
			11-101	\$69,900
			11-107	\$62,300
			11-201	\$69,900
			11-202	\$69,900
			11-207	\$69,900
			11-208	\$69,900
			11-301	\$69,200
			11-305	\$72,000
		11297-91	11-307	\$69,200
			11-308	\$69,200
			11-401	\$69,200
			11-402	\$69,200
		11297-91	11-407	\$69,200
			11-408	\$69,200
		11297-91	12-101	\$78,000
			12-103	\$80,800
			12-105	\$72,700
			12-107	\$72,800
			12-201	\$78,000
		11297-91	12-202	\$69,900
			12-203	\$80,800
			12-204	\$68,200

			12-205	\$72,700
			12-206	\$80,800
		11297-91	12-207	\$78,800
			12-208	\$69,900
			12-301	\$75,400
		11297-91	12-302	\$69,200
			12-303	\$79,800
			12-304	\$79,800
			12-305	\$79,800
		11297-91	12-306	\$72,000
			12-307	\$77,000
		11297-91	12-308	\$69,200
			12-401	\$69,200
		11297-91	12-402	\$77,000
		11297-91	12-404	\$72,000
		11297-91	12-406	\$72,000
		11297-91	12-408	\$77,000
George Tremblay	9507-90		3-107	\$78,000
Patricia and Brian Watson	9385-90	11266-91	11-103	\$80,800
Cynthia Wilber	9356-90	11267-91	2-105	\$80,800
Mark Wilder and Darsi Russell	9358-90	11268-91	2-204	\$80,800
Anne Graves Bartlett		11229-91	11-203	\$80,800
Jacqueline Dudka		11236-91	3-208	78,000
Satenig Dulgarian-Ghazarian		11384-91	1-201	\$78,000
Francine M. Frechette		11241-91	12-303	\$79,800
Steven Garcia and Shawna Sample		11391-91	11-403	\$79,800
Gervaise Gosseline		11242-91	12-203	\$80,800
Michael McGinnin and Linda Culleton		11254-91	11-308	\$77,000
Thomas and Peter Moore		11256-91	1-203	\$80,800
			1-303	\$79,800
M. Bruno and J. Nentwig		11258-91	1-108	\$78,000
			1-208	\$78,800
Paul Taylor		11264-91	12-301	\$75,400

The parties agreed to consolidate the appeals due to the similarity of property and common issues involved. The parties also waived a hearing and agreed to allow the board to decide the appeals on written submittals. The

board has reviewed the written submittals and issues the following decision. For the reasons stated below the appeals filed for 1990 are denied. The appeals filed for 1991 are granted.

ARGUMENTS

The Taxpayers' representative, Gary Stern, argued:

- 1) sale prices have dropped approximately 50% since the 1988 revaluation year;
- 2) recent sales between \$40,000 - \$50,000 indicate an assessment ratio above 1.03%;
- 3) 1992 advertising prices by the developer start at \$39,000 offering some concessions, i.e., paying points, 100% financing;
- 4) comparing the 1990 sales assessment ratio with Morgan Estates Condominiums (townhouse units) indicate Timberwood is disproportionately assessed; and
- 5) adjusting assessments to market values indicates a value of \$50,000 to \$60,000.

The Town argued:

- 1) Taxpayers' representative's appeal is based on late 1990 and 1991 sales information - only sales prior to appeal date should be considered (RSA 75:8);
- 2) sales information submitted by the Taxpayers range from January 30, 1991 to June 30, 1992 for an April 1, 1991 appeal;
- 3) on April 27, 1990 Timberwood Development Trust filed Chapter 11 on the remaining 47 units;
- 4) sales subsequent to Chapter 11 filing should not be considered arms-length transactions as they are made under financial duress;
- 5) Timberwood's situation is unique in Town and not indicative of the market place, even with the declining market;
- 6) the equalization ratio for 1991 of 1.22% is an average for the Town; and
- 7) the submitted spread sheet clearly shows Timberwood Condominium was fairly

assessed as of April 1, 1991.

BOARD RULINGS

INTRODUCTION

The board notes this is a classic example of property in a market which is in transition being affected by both internal and external economic factors.

The facts presented in this case underscore the importance of assessments being focused on the April 1 assessment date.

While not appealed, the evidence submitted for the 1989 tax year shows that the units were reasonably assessed in 1989 and in fact, if anything, slightly underassessed (93% of value compared to the Town 1989 ratio of 96%).

1990 TAX YEAR

Sales that occurred in late 1989 and early 1990 indicate that the properties were, as of April 1, 1990, proportionally assessed. See Town's submittal, Timberwood Condominium 1990 Equalization Analysis. The occurrence of the developer filing Chapter 11 on April 27, 1990 is an action that has the potential to affect market values negatively. However, the sales data does not reflect that there was any public perception of the pending bankruptcy as of April 1, 1990.

1991 TAX YEAR

As of April 1, 1991, the cumulative effect of the negative market indicators of 1990 became more apparent in the market place. In addition to general market conditions, the bankruptcy and subsequent reorganization of the developer had some impact, as of April 1, 1991, on the market value of all units in the project. The sales made by an owner to satisfy delinquent loans or to satisfy a bankruptcy reorganization are not "arms-length" due to the pressure on the owner to sell; consequently, while these accelerated sales will affect the market value of those who choose not to sell, they alone do not

define the market.

The Town argued sales subsequent to April 1, 1991 are not relevant to determine the assessments as of April 1, 1991. Not so. Sales that occurred both prior and subsequent to April 1 may be considered, as long as the sales are adjusted to the April 1 date for time and other value influencing factors.

In this case, where values for the property were changing quickly, those sales closest to the April 1, 1991 date should be given the most weight. The eleven sales¹ within three months of April 1, 1991 (see Town's rebuttal of November 30, 1992) indicate an assessment to sales ratio of 141%. These sales, however, were all sales by the developer following bankruptcy. Therefore, the board rules that the approximate 16% difference between the ratio and the Town's 1991 equalization ratio of 122% does not by itself dictate a reduction by 16%.

There were no resales of units in 1991 while the developer's sales were taking place. However, in April 1992, two resales occurred for \$41,500 and \$41,900 reflecting further decline in the units' values. These two sales show that the market value continued to decline from 1991 to 1992, but it is not possible to isolate how much of the decline was attributable to either general market conditions or the developer's difficulty at Timberwood.

This is where appraising and assessing part company. Just as it would be improper to order a 16% abatement based solely on non-arms-length sales, so would ordering no abatement be improper given the facts presented the board.

¹ The Taxpayers submitted purchase and sales agreements dated in late 1990 for many of these eleven sales. Anticipating a Taxpayers' argument on rehearing that the sale prices were determined months before the recorded date, the board finds that the assessments for levying taxes should be based upon publicly recorded documents that reflect the price as of the day of closing not purchase and sales agreements that can be amended to the day of closing.

Therefore, the board rules a 10% reduction in the assessments is reasonable for the 1991 tax year.

For 1991 only, if the taxes have been paid, the amount paid on the value in excess of 90% of the assessments listed above shall be refunded with interest at 6% per annum from date paid to refund date. RSA 76:17-a.

No abatement is ordered for 1990.

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

George Twigg, III, Chairman

Paul B. Franklin, Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Gary Stern, representing taxpayers; and Chairman, Selectmen of Goffstown.

Dated: December 31, 1992

Melanie J. Ekstrom, Deputy Clerk

0004

Timberwood Condominiums

v.

Town of Goffstown

Docket Nos.: 9347-90 thru 9390-90 and 9507-90

Docket Nos.: 11228-91PT thru 11268-91PT
11297-91PT, 11373-91PT, 11384-91PT, 11385-91PT, 11391-91PT

AMENDED DECISION

The board amends its decision dated December 31, 1992, by deleting:

"Judith Ferguson, 11692-91, 2-203, \$80,800,"

from page 2 because Taxpayer's appeal was dismissed by board's order dated December 8, 1992, for not having met the timely filing requirements with the Town. RSA 76. Because the board has no jurisdiction over this appeal no abatement is ordered for this Property for the tax year 1991.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing amended decision has been mailed this date, postage prepaid, to Gary Stern, representing taxpayer; and Chairman, Selectmen of Goffstown.

Dated: January 5, 1992

Melanie J. Ekstrom, Deputy Clerk