

Barbara J. Calt  
Wayne F. and Marilyn Bailey  
Joseph E. Carney, Jr. and Cindy Clark  
Thomas K. Scallen

v.

Town of Windham

Docket Nos.: 9780-90 through 9783-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments on four condominium units known as "Heron Cove" (the Properties) listed as follows.

Taxpayer	Unit No.	Land Value	Bldg. Value	Assessment
Calt	E	\$ 72,910	\$ 71,090	\$ 144,000
Bailey	C	\$ 72,910	\$ 71,090	\$ 144,000
Carney/Clark	D	\$ 72,910	\$ 71,090	\$ 144,000
Scallen	B	\$ 72,910	\$ 71,090	\$ 144,000

Wayne F. and Marilyn Bailey also own, but did not appeal, a vacant lot in the Town assessed at \$16,910. The parties did not argue that this nonappealed property was incorrectly assessed. For the reasons stated below, the appeals

for abatement are denied.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) condominiums were worth less than single-family lake homes because of changes in the market yet condominiums were assessed higher;
- (2) the Town assessed condominiums higher simply because of the form of ownership not because of value; and
- (3) the Town overassessed the land and assessed it differently than the land assessment on single-family lake homes.

The Town argued the assessments were proper because the assessments were in line with the market data of sales within the development.

The board's inspector inspected the Properties, reviewed the assessment-record cards, reviewed the parties' briefs and filed a report with the board (copy enclosed). This report concluded the assessments were proper. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

#### Board's Rulings

We find the Taxpayers failed to prove the Properties' assessments were disproportional. We also find the Town supported the Properties' assessments.

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

The Taxpayers focused on asserted deficiencies in the Properties' assessment, arguing single-family lake homes were assessed lower. Under RSA 75:1, the focus, however, is on the market values and the comparison of those market values with the general level of assessment throughout the Town, not just assessments on the lake. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. The market-value data, when compared to the general level of assessment as calculated by the department of revenue (DRA), demonstrates proper assessment.

Specifically, unit B sold on August 17, 1989, for \$350,000, which when adjusted by the DRA's equalization ratio (45%) would result in an assessment of \$157,500. Note: the unit B price was in line with the other sales at this development. Thus, the assessments were not excessive compared to the market sales of the units. This conclusion is also consistent with the board inspector's report. We note the prices paid were in the higher end due to the scarcity of waterfront properties. Thus, availability not form of ownership was the reason for the sales prices.

The Taxpayers focused their arguments on the land assessment. 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). The market data of the whole value

Page 4

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

supported the assessments.

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

Concerning the assessments on single-family lake houses, if the Taxpayers' arguments are accurate, these properties are either valued less by the market or the assessments were insufficient. Neither conclusion helps the Taxpayers. The underassessment of other properties does not prove the overassessment of the Taxpayers' Properties. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessments because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

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

---

Ignatius MacLellan, Esq., Member

Page 6

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Wayne F. Bailey, Individually and as Representative for Barbara J. Calt, Wayne F. and Marilyn Bailey, Joseph E. Carney, Jr. and Cindy Clark, and Thomas K. Scallen, Taxpayers; and Chairman, Selectmen of Windham.

Dated: February 22, 1994

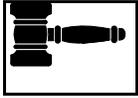
0008

---

Valerie B. Lanigan, Clerk

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT



PROPERTY TAX APPEALS  
HERON COVE CONDOMINIUMS  
TOWN OF WINDHAM, NEW HAMPSHIRE



**TO:** Board Of Tax and Land Appeals

**FROM:** Scott Bartlett, Board's Review Appraiser

**DATE:** July 26, 1993

**RE:** Initial Investigation and Analysis of various appeals of Heron Cove  
condos in the Town of Windham for the tax year of 1990.

Dear Board:

According to your request, I have conducted an investigation and analysis of the Heron Cove Condominiums located at 88 Indian Rock Road in the town of Windham.

The purpose of the report is to estimate a fair and equitable assessed value as defined by RSA 75:1 as of April 1, 1990. The assessed value is defined as "market value or some legally authorized fraction thereof." (IAAO 4) The property rights considered are fee simple.

An exterior inspection of the property was made on July 22, 1993 and I spoke with Don Dollard, the town's assessor and Wayne Bailey, one of the property owners. Interior information and measurements were taken from the property record card and/or the taxpayer's submittal. Photographs of the subject properties were taken and are in the Board's file.

The DRA's equalization ratio was assumed to be representative of the level of assessment in the Town of Windham.

After considering all factors contained in this report, the Board's file on this appeal and furthermore, based upon my experience as a real estate appraiser, it is my opinion that the subject properties are assessed fairly as of April 1, 1990.

The Board of Tax and Land Appeals has reviewed this report and copies have been sent to Don Dollard, the Windham assessor and the appellants. I will be available to discuss this report by telephone at (603) 271-2578. Withdrawal forms have also been sent to the appellants; since, the Board may award costs to the Town if the appeal is considered to be frivolous and unwarranted.

I hereby submit the following report.

Sincerely,

Page 8

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

Scott W. Bartlett

Page 9

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

SUMMARY

Property Location: 88 Indian Rock Road, Windham, NH

Docket #'s: 9780-90 through 9783-90

Owner's Names: Barbara J. Calt; Wayne F. & Marilyn Bailey; Joseph  
E. Carney, Jr. & Cindy Clark; Thomas K. Scallen.

Purpose of

Report: To estimate a fair and equitable assessment of the  
fee simple rights, in the subject property as  
defined by RSA 75:1 for the tax year 1990.

Improvements: 4 individual residence condominium units.

Highest and Best Use: Residential Condominiums

1990 Assessed Value: \$144,000

DRA Equalization Ratio: 0.45 DRA COD: 21.65%

Equalized Assessed Value: \$320,000

Gross Building Area(GBA): 1,800 sf

Eq. Assessed Value per GBA: \$177.78

Total Lot Size: 1.91 Acres

Final Value Estimate: \$311,100 to \$321,500

Estimate of Assessment: \$140,000 to \$144,700

Date of Value Estimate: April 1, 1990

Date of Report: July 26, 1993

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

**COMMENTS AND OBSERVATIONS OF REVIEW APPRAISER**

Heron Cove condominiums are four individual single family homes. They are located at 88 Indian Rock Road on 1.91 acres of land with 300+ feet of frontage on Cobbetts Pond. Access from Indian Rock Road is through Heron Cove Road, which is a private road. Each of the units has a dock. The condominium development was built in 1987. The lot had five small cabins, which were removed and replaced with the four residential units. According to Don Dollard, the declaration of condominium allowed the developer to build four separate residences. Under normal circumstances, the lot could have only supported two lots.

In a report submitted to the Board, the taxpayers argue that the subject properties, and condominiums as a whole, are overvalued since single family homes are valued by a land formula, using frontage and a building formula, while condominiums are valued by a similar land and building formula plus an amenity value. Five condominium sales are listed which show an assessment to sales ratio of 46% to 55%. Seven sales in the Cobbetts Pond district have an average assessment to sales ratio of 33%. The taxpayers assert that if they were equalized to "Village(tax) District value", they would be assessed at \$110,500 (33% of sales price). They further assert that if they were assessed exactly as a single family home, they would be assessed at \$109,023.

Don Dollard argued that the assessments were fair; since, the actual sales of the subject properties had assessment to sales ratios similar to the DRA's ratio and "the owner did not prove that the subject property was valued at a higher level than the level generally prevailing in the town as a whole."

Listed below are the date and selling price of the individual units, the assessment to sales ratio (all units are assessed at \$144,000) and the DRA's equalization ratio at the time of the sale:

Unit	Date	Sales Price	Sale Ratio	DRA's Eq. Rt.	% Differ.
C	9-87	\$334,900	.430	.45	4.44%
E	6-88	\$350,000	.424	.42	-0.95%
D	12-88	\$360,000	.400	.44	9.09%
B	8-89	\$340,000	.411	.44	6.59%

The above information indicates that at the time of the sales, the subject units were underassessed by between 4.44% to 9.09%, except for unit E,

Page 11

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

which was overassessed by 0.95%.

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

Using the sales of the subject properties, the DRA's equalization rates for 1987, 1988, 1989 and 1990, and my own experience as a real estate appraiser as a guide, the following time adjustments were considered:

9/87 to 12/88	+0.5% per month
1/89 to 8/89	-0.5% per month
9/89 to 4/90	-1.0% per month

Using the above adjustments to adjust the subject properties sales to April 1, 1990 gives the following results:

Unit	Date	Sales Price	Time Adj.	Adjusted Sale Price
C	9-87	\$334,900	- 4.0%	\$321,500
E	6-88	\$350,000	- 8.5%	\$311,100
D	12-88	\$360,000	-11.5%	\$318,600
B	8-89	\$340,000	- 8.5%	\$320,250

The adjusted sales prices indicate a fair market value as of April 1, 1990 from \$311,100 to \$321,500. Adjusting the market value by the DRA's equalization rate yields a fair assessment as of April 1, 1990 from \$140,000 to \$144,700. The most representative sale would be the most recent; unit B has an adjusted sales price of \$320,250 or \$144,100 of assessed value.

The above analysis indicates that the subject properties are assessed fairly in relationship to the general level of assessment of the Town. The taxpayers have argued that they are overassessed in relation to other waterfront properties; however, the underassessment of other properties does not prove the overassessment of the Taxpayers' property. See Appeal of Michael D. Canata, Jr., 129 NH 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of the underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform to the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick.

In the Appeal of the Town of Sunapee, 126 NH 214, 217 (1985), "a taxpayer ... must establish that his property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town." Further, it is stated in Amoskeag Manufacturing Co. v. Manchester, 70 NH 200, 206 (1899), that an abatement "is not granted merely to make their assessment similar with the assessment of other taxpayers in the same business

Page 13

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

or owning the same property."

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

Based on the information in this report, the Board's file and furthermore, based on my experience as a real estate appraiser, it is my opinion that the subject properties are fairly assessed as of April 1, 1990. It is my recommendation that the appellants withdraw their property tax appeals as no evidence has been presented that supports a reduction in their assessed value. A copy of a withdrawal form will be sent to each of the taxpayers along with a copy of this report. If the case is continued and the board feels that the appeal is frivolous and unwarranted, the board has the authority to award costs to the town.

While it is my opinion that a property tax abatement is not warranted, it should be noted that the taxpayers have raised valid concerns. The sales presented indicate that waterfront properties were underassessed and non-waterfront condominiums were overassessed in the town of Windham in 1990. This is good evidence for a reassessment petition under RSA 71-B:16, IV, in which the board has the power to order the reassessment of a town when it receives a complaint signed by at least 50 property taxpayers.

Page 15

Calt, Bailey, Carney/Clark and Scallen v. Town of Windham

Docket Nos.: 9780-90 through 9783-90PT

**ADDENDUM A**  
**TRACING OF TOWN MAP #17**