

David Canada

v.

Town of Newmarket

Docket No.: 9876-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" total 1990 assessment of \$358,100 (land \$49,400; buildings \$308,700) on Bay Road Condominiums, a .60-acre lot with 19 condominium units (the Property). The condominium units were assessed separately as follows:

<u>Unit #</u>	<u>Location</u>	<u>Assessed Value</u>
1	3 Ham St.	\$20,000
2	3 Ham St.	\$15,800
3	3 Ham St.	\$26,500
5	3 Ham St.	\$25,700
6	3 Ham St.	\$17,500
7	3 Ham St.	\$17,500
8	11 Bay St.	\$16,500
9	11 Bay St.	\$17,500
10	11 Bay St.	\$17,500
11	11 Bay St.	\$19,000
12	11 Bay St.	\$11,900
13	11 Bay St.	\$13,700
14	9 Bay St.	\$22,500
15	9 Bay St.	\$29,600
16	9 Bay St.	\$38,200
17	9 Bay St.	\$30,600
18	9 Bay St.	\$38,000
19	9 Bay St.	\$36,400
20	7 Bay St.	\$50,800

The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, given the complexity of the issues, the board held a hearing on June 11, 1993, at which only the Town appeared. The Taxpayer failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayer was not defaulted. This decision is based on the evidence presented to the board. The board has reviewed the written submittals 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.

The Taxpayer argued the assessment was excessive because:

- 1) the Property was purchased as apartment buildings in March, 1986 for \$545,000, and refinanced in 1988 for \$550,000;
- 2) the Property was listed for sale in 1988, and received only one offer for less than \$500,000;
- 3) the Property was converted to condominium units in October, 1989 to increase salability, and the units were listed for sale from \$27,000 to \$52,000 with no offers to purchase;
- 4) the assessed value increased 50% when the Property was converted to condominiums even though no changes were made to the units;
- 5) despite the condominium status, the units were only rented and, in 1990, the units had a 24% vacancy rate;

- 6) the units were substandard and the buildings are over 75 years old;
- 7) there were no comparable properties because the Property is old, at the low end of the market, and more commonly used as rental apartments;
- 8) other apartment buildings in Town had an average, \$23,856 per-unit sale price, while the Property had an average \$37,695, per-unit assessed value; and
- 9) the average assessed value should be \$20,732 per unit.

The Town argued the assessment was proper because:

- 1) the Property has frontage on two roads;
- 2) physical and functional depreciation factors were applied to each unit, and the units were assessed as average quality;
- 3) the Taxpayer based his argument on a 50% equalization ratio when it was 62%; and
- 4) if the total asking price for all the units (\$783,000) is discounted 10% for it being an asking price, and then compared to the total assessment, the assessment to discounted-asking-price ratio is 51%, 26% lower than the equalization ratio of 62% for 1990.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded no change in the assessment was warranted.

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. In this case, the board placed no weight on the report.

Board's Rulings

Based on the evidence, the board finds the proper total assessment should be \$321,000. 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. 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 municipality shall make this allocation in accordance with its assessing practices.)

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

- 1) The Taxpayer incorrectly assumed a ratio of 50% for the Town for 1990 -- the actual equalization ratio as determined by the Department of Revenue Administration and used by the Town in their analysis was 62%.
- 2) Both parties agreed that, due to the uniqueness of the Property, there were no directly comparable sales. However, the Taxpayer did present sales data of both apartment complexes and garden-style apartment/condominium units that gave evidence of the generally declining market trend for these types of property.
- 3) The highest and best use of the Property as of April, 1990 is as apartments with the option to sell units as condominiums. The Town determined the highest and best use was as condominiums because of the owner's filing of the condominium declaration in the fall of 1989. While the Town assessment process resulted in values approximately 36% less than the asking prices, its

starting point was to adopt the highest and best use as condominiums solely

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because of the Taxpayer's actions. This assumption, however, was speculative given the poor market for low-priced condominiums in 1990 and the lack of comparable or subject property sales:

"The (highest and best) use must be a probable use and not a highly unlikely or 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) An indicated market value as rental units of \$302,000 (rounded) by the income approach can be derived based on the following evidence submitted by both parties:

- a) gross potential income of \$92,280 (the Town stated the actual rents approximated market rents);
- b) reduce the actual vacancy rate from 24% to 15% (the Town stated a study of other apartment complexes indicated an average vacancy rate of 12%);
- c) actual expenses of \$17,600 (property taxes should be included as a component of the capitalization rate, not the expenses, in estimating value for assessment purposes);
- d) a capitalization rate of 12.5% as testified to by the Town; and
- e) equalization ratio of 62%.

Summary of calculation:

\$ 92,280	(gross operating income)
x <u>.85</u>	(expenses)
\$ 78,438	(effective gross income)
- <u>\$17,600</u>	(expenses)

\$ 60,838 (net operating income)
÷ .125 (capitalization rate)
\$486,700 (market value indication)
x .62 (equalization ratio)
\$301,756 (indicated assessed value).

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5) As this estimate of value is for the Property solely as an apartment complex, the value for the option of selling units as condominiums must be added. The board estimates an additional \$1,000 of assessed value per unit for the option to sell as condominiums.

Given all the imponderables in the valuation process, "[j]udgment is the touchstone" Public Service Co. v. Town of Ashland, 117 N.H. 635, 639.

6) A reasonable assessment is derived by adding the \$302,000 income estimate to the \$19,000 condominium option estimate.

If the taxes have been paid, the amount paid on the value in excess of \$321,000 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Vincent Czaplyski, Agent for David Canada, Taxpayer; and Chairman, Selectmen of Newmarket.

Dated: July 15, 1993

Valerie B. Lanigan, Clerk

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