

**Cruess/Lincoln Partnership**

**v.**

**Town of Lincoln**

**Docket No.: 11185-91**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$185,300 on a condominium unit (#406) in The Rivergreen Condominiums (the Property). 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 203.09(a); 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 in December, 1989 for \$180,000 which included \$8,000 for contents;
- (2) the Property is disproportionately assessed in comparison to all other properties in Town;

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- (3) comparable sales support the contention that the Property is overassessed; and
- (4) a fair assessment is \$120,600.

The Town recommended a 10% reduction to the assessment to \$166,800 and argued this assessment was proper because:

- (1) the Zappala sales were not truly representative of the overall picture of purchasers and resales;
- (2) a study of resales of bank sales supports the rule of thumb that bank sales typically sell from 50 to 80 percent of value and the Town's opinion that a .65 factor for bank sales is reasonable; and
- (3) Rivergreen units are more of a hotel type setting and have better rentability.

Board's Rulings

Based on the evidence, we find the fair market value of the Property to be \$104,000 and correct assessment should be \$134,160. 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, and the Town shall make this allocation in accordance with its assessing practices.)

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This assessment is ordered because the evidence suggests that condominium developments in the Town of Lincoln have experienced financial difficulties due to the recession thus creating a significant decrease in sales activity, increased foreclosures, and reduced sale prices. The market was impacted by the high percentage of distressed transfers, and a prudent buyer would look to the glut of units available through companies retained by the various lending institutions to manage their portfolios rather than purchase directly through an owner or developer. The asking prices set by the Finch Perspective in March, 1991 certainly put a ceiling on what a buyer would pay for a unit at that time. Asking prices continued to drop significantly as evidenced by the October, 1991 letter from Regents Park Partners, Inc. Further, the continued decline in the condominium market is evidenced by the Town's 1993 assessment of \$82,000 on the Property and the 1994 purchase and sale agreement on the subject for \$65,000.

Based on all of the evidence submitted and the board's expertise and experience, the board finds the proper market value as of April 1, 1991 to be \$104,000 and by applying the 1991 equalized ratio of 129% as determined by the department of revenue administration, results in a proper assessment of \$134,160. 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. 63, 68 (1975); see also Petition of Guimm, \_\_\_ N.H. \_\_\_ (Dec. 17, 1993) (administrative board may use expertise and experience to evaluate evidence).

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If the taxes have been paid, the amount paid on the value in excess of \$134,160 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William Eggleston, Managing Partner of Cruess/Lincoln Partnership, Taxpayer; and Mary E. Pinkham-Langer, Agent for the Town of Lincoln.

Dated: March 30, 1994

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Valerie B. Lanigan, Clerk