

**Russell Wilkinson**

**v.**

**Town of Milford**

**Docket Nos.: 12025-91-PT, 13276-92-PT and 14272-93-PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991, 1992, and 1993 assessments as follows.

<u>Map/Lot</u>	<u>Land Assessment</u>	<u>Bldg. Assessment</u>	<u>Total Assessment</u>
43/32	\$1,498,800	\$3,567,600	\$5,066,400
43/33	776,700	1,783,800	2,560,500
43/35	32,500	6,900	39,400

The appealed properties are three apartment buildings with 180 units (the Property). For the reasons stated below, the appeals for abatement are granted to the Town's recommended assessments.

The Taxpayer has the burden of showing the assessments were 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 parties filed a stipulation on the following:

- (1) the income approach was the best approach to value in these appeals;
- (2) market rents and vacancies should be used;

(3) the Property's effective gross income (EGI) was \$971,978 for the three years (While the parties agreed to the EGI, the parties apparently misunderstood whether the EGI was based on rents without heat or rents with heat. The Town asserted the EGI was based on rents without heat [heat paid by tenant], and the Taxpayer asserted the EGI was based on rents with heat [heat paid by landlord].);

(4) 10% was the appropriate capitalization rate before adding the effective tax rates; and

(5) the overall capitalization rates to be used are 1991 - 11.88%, 1992 - 12.17% and 1993 - 12.30%.

The parties disagreed about what expenses should be used in the income approach and what effect, if any, the asbestos had on the Property's value.

The Town agreed the Taxpayer was entitled to assessment reductions, resulting in the following assessments: 1991 - \$6,087,100; 1992 - \$6,666,900; and 1993 - \$6,590,000.

The Taxpayer argued the assessments were excessive because:

(1) actual expenses should have been used because they reflect the Property's true value;

(2) market expenses would have been formulaic and would not consider the attributes of individual properties;

(3) the actual expenses were incurred because of the requirements of running the Property;

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(4) the Taxpayer's appraiser testified the electric heating expenses and maintenance expenses were higher than market expenses and these higher expenses should have been included in the income analysis as a deduction;

(5) the presence of asbestos should have been considered, including considering whether the asbestos increased expenses for maintenance or insurance; and

(6) the appraiser estimated a \$3,500,000 value as of November 1993.

The Town argued the recommended assessments were proper because:

- (1) market expenses should have been used in the income analysis; and
- (2) the Town reviewed operating expenses for other multi-unit properties and calculated a market expense ratio.

The Town submitted a report to support the recommended assessments, which the board reviewed and will not be reiterated here.

**Board's Rulings**

Based on the evidence, we find the correct assessments should be as recommended by the Town:

1991:	\$6,087,100
1992:	\$6,666,900
1993:	\$6,590,000

We find the Taxpayer failed to prove the Properties' revised assessments were disproportional.

We also find the Town supported the Properties' revised assessments.

Due to the stipulation by the parties, the sole issue that the board has to address is what is the appropriate expense ratio to be applied to the EGI

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of \$971,978 as stipulated to. The Taxpayer indicates that expense ratio for this type of property with electric heat is in the 50% - 60% range (specifically 57.5% exclusive of real estate taxes, as indicated in the Kline Company Appraisal submitted by the Taxpayer) while the Town argued an expense ratio of 40% was appropriate for the Property. The parties' differences focused on primarily three components of the expenses: utilities (including heat); insurance; and maintenance and repairs.

The board finds the Town's 40% expense rate is supported by the evidence and is reasonable and proper for the Property. The board's findings to support this ruling will follow the three main areas of disagreement by the parties.

### **Utilities**

The board finds the stipulated EGI of \$971,978 did not include any rental income attributable to heat being paid by the owner. Both the Town's and the Taxpayer's potential gross income were based on actual rents (which they both indicated were reflective of market rents) that did not include any heat being paid by the owner. Further, the board notes that the actual rents listed for the various unit types by the Town in Tab G of its submittal and by the Taxpayer's appraisal on Page 100 are identical for all unit types with the exception of the single three bedroom unit. Because there was no heat considered paid by the owner in the EGI, there is no need to have a high utility expense. The only heat expense incurred by the owner would be for heating the common areas and vacant units.

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### **Insurance**

The Taxpayer argued the insurance portion of the expenses would be higher than normal due to the existence of asbestos material in the ceilings of the units. Reviewing the market expenses as submitted by the Town and the actuals as submitted in the Kline Appraisal, the board finds that there was no noticeable affect of the asbestos on the insurance costs. The Town's market analysis of four complexes (one of them being the Taxpayer's) indicated that insurance costs were, on average, approximately 1.8% of the EGI. The Kline Appraisal, as submitted by the Taxpayer concluded a stabilized insurance cost of \$16,000 would be appropriate which equates to approximately 1.5% of the Kline Appraisal's EGI. The board finds that both the Town and the Taxpayer's appraisers have indicated that the insurance cost would be similar and do not apparently reflect any noticeable impact of the asbestos ceilings.

### **Maintenance and Repairs**

The Taxpayer argued that the maintenance and repairs of the Property are higher than other projects, due to both the age and condition of the Property during the tax years in question and the

requirement that there be a program of observation and maintenance for the asbestos ceilings. The board finds the Kline Appraisal's estimate of 17.4% expense ratio for maintenance repairs to be excessive for the following reasons:

1) the maintenance and repair expense for 1992 and 1993 were abnormally high because, as testified to, the owner at that time, Metropolitan Life, spent an inordinant amount of money to address the deferred maintenance of

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the Property; while the Kline Appraisal attempted to stabilize a repair and maintenance expense figure from the three year actuals, the board finds the stabilized amount was excessive for a reasonable ongoing repair and maintenance program; and

2) there was no evidence submitted that the observation and maintenance program to keep the asbestos ceilings painted was a significant expense factor.

However, the board does find, as did the Town, that the project would have slightly higher maintenance and repairs due to its age and general condition. The board finds the Town's choice of the 40% expense ratio was at the high end of the range indicated by their market analysis. Therefore, the board finds the higher repair maintenance nature of the Property is properly reflected in the Town's 40% expense ratio.

If the taxes have been paid, the amount paid on the value in excess of the amounts listed under the Board's Rulings shall be refunded with interest at six percent per annum from date paid to refund date.

RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992, 1993 and 1994. 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;

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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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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George P. Dickson, Esq., representative for Russell Wilkinson, Taxpayer; and the Chairman, Selectmen of Milford.

Dated: December 13, 1994

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Valerie B. Lanigan, Clerk