

**FDIC/Receiver for Dartmouth Bank**

**v.**

**Town of Woodstock**

**Docket No.: 12129-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the following assessments used by the "Town" in 1991.

<b>Map/Lot #</b>	<b>Land Assessment</b>	<b>Bldg. Assessment</b>	<b>Total Assessment</b>
204.004.159B	1,500	10,500	12,000 *
204.004.159C	1,500	10,500	12,000 *
204.004.159D	1,500	10,500	12,000 *
204.004.160C	1,500	8,000	9,500 *
204.004.161D	1,500	8,000	9,500 *
204.004.162A	1,500	10,500	12,000 *
204.004.162C	1,500	10,500	12,000 *
204.004.162D	1,500	10,500	12,000 *
204.004.163A	1,500	10,500	12,000 *
204.004.163B	1,500	10,500	12,000 *
204.004.163C	1,500	10,500	12,000 *
204.004.163D	1,500	10,500	12,000 *
204.004.164A	1,500	8,000	9,500 *
204.004.164B	1,500	8,000	9,500 *

204.004.164C	1,500	8,000	9,500 *
204.004.164D	1,500	8,000	9,500 *
204.004.165C	1,500	8,000	9,500 *
204.004.166A	1,500	10,000	11,500 *
204.004.166C	1,500	10,000	11,500 *
204.004.167A	1,500	10,000	11,500 *
204.004.167C	1,500	10,000	11,500 *
204.004.167D	1,500	10,000	11,500 *
204.004.168C	1,500	8,000	9,500 *
204.004.169A	1,500	8,000	9,500 *
204.004.169C	1,500	8,000	9,500 *
204.004.170A	1,500	10,500	12,000 *
204.004.170C	1,500	10,500	12,000 *
204.004.170D	1,500	10,500	12,000 *
204.004.171A	1,500	10,500	12,000 *
204.004.171B	1,500	10,500	12,000 *
204.004.171C	1,500	10,500	12,000 *
204.004.171D	1,500	10,500	12,000 *
204.004.172A	1,500	9,750	11,250 *
204.004.172B	1,500	9,750	11,250 *
204.004.172C	1,500	9,750	11,250 *
204.004.172D	1,500	9,750	11,250 *
204.004.173A	1,500	9,750	11,250 *
204.004.173B	1,500	9,750	11,250 *
204.004.173C	1,500	9,750	11,250 *
204.004.173D	1,500	9,750	11,250 *
204.004.174C	1,500	10,000	11,500 *
204.004.174D	1,500	10,000	11,500 *
204.004.175A	1,500	10,000	11,500 *

204.004.175B	1,500	10,000	11,500 *
204.004.175C	1,500	10,000	11,500 *
204.004.175D	1,500	10,000	11,500 *
204.004.176A	1,500	9,750	11,250 *
204.004.176B	1,500	9,750	11,250 *
204.004.176C	1,500	9,750	11,250 *
204.004.176D	1,500	9,750	11,250 *
204.004.177A	1,500	9,750	11,250 *
204.004.177B	1,500	9,750	11,250 *
204.004.177C	1,500	9,750	11,250 *
204.004.178A	1,500	10,500	12,000 *
204.004.178B	1,500	10,500	12,000 *
204.004.178C	1,500	10,500	12,000 *
204.004.178D	1,500	10,500	12,000 *
204.004.201	1,500	13,200	14,700 *
204.004.202	1,500	12,600	14,100 *
204.004.203	1,500	13,200	14,700 *
204.004.204	1,800	13,200	15,000 *
204.004.205	1,800	12,600	14,400 *
204.004.206	1,800	13,200	15,000 *
204.004.207	2,100	13,200	15,300 *
204.004.208	2,100	12,600	14,700 *
204.004.209	2,100	13,200	15,300 *
204.004.002	25,000	499,600	524,600
204.002.098	150,000		150,000

Map and lot numbers 204.004.159B through 204.004.178D are 57 quarter-share interests in 20 condominium units in a development known as "Deer Park."

Map and lot numbers 204.004.201 through 204.004.209 are whole interests in

nine condominium units at Deer Park. Map and lot number 204.004.002 is the recreational center (Center) at Deer Park, consisting of a sales office, function room with kitchen, indoor pool, racquetball courts, locker rooms, saunas, spa, game room, fitness room and TV room. Map and lot 204.002.098 is the assessment of 100 approved but unbuilt units in the area of Deer Park known as the "Meadows." For the reasons stated below, the appeal for abatement is granted.

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 its burden.

The Taxpayer argued the assessments were excessive for the following reasons.

#### **Recreational Center**

(1) The rights of the unit owners to the Center was by a lease arrangement; when the homeowners' association repudiated the lease in July 1990, the Center had very limited use due to its integrated nature with the development.

(2) Based on the sale of Center from BWDP (the subsequent developer) to DPPOA (Deer Park Property Owners' Association, Inc.) in May 1993 for \$175,000 and a review of nine sales of other recreational facilities, the Center was estimated to have a market value of \$175,000 as of April 1, 1991.

#### **Development Rights and Land Component Value**

(3) Both the income and direct sales approaches indicated a market value for the 100 approved sites to be \$800 per site.

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(4) The condominium rights to develop the remaining 100 sites are scheduled to expire in 1997.

(5) Due to the financial problems with the development and the general banking and real estate difficulties in 1991, no sales of units occurred that year; however, it can be assumed that the 1991 market approximated the 1993 market when units were selling at approximately 60% of the 1990 level (\$11,000 to \$17,000 for quarter-share interests).

The Town argued the assessments were proper for the following reasons.

#### **Recreational Center**

(1) The Taxpayer used information relative to the market that occurred subsequent to 1991.

(2) Most of the Taxpayer's comparables sold under some sort of duress.

(3) Capitalizing the potential rent indicated a value of \$500,000 while the cost approach indicated a value of approximately \$1,500,000.

(4) The Center has remaining intrinsic or promotional value for the developer.

(5) The Center cost in excess of one million to construct in 1987.

#### **Development Rights and Land Component Value**

(6) The basic value of \$6,000 for an improved condominium site was derived by the land residual method from sales of units.

(7) This basic value was reduced by 75% to value the approved but unimproved sites.

(8) Sales in 1994 indicated whole interests in units were again selling for \$100,000 to \$120,000 (\$25,000 to \$30,000 for quarter interests).

## Board's Rulings

### Recreational Center

Based on the evidence, we find the correct assessment for the Center should be \$216,000. This assessment is based on a market value finding of \$450,000 equalized by the Town's 1991 equalization ratio of 48% ( $\$450,000 \times .48$ ).

The Center is a difficult property to value because to achieve its highest and best use it is interdependent on the balance of the Deer Park development. However during its deliberations, the board was mindful of the concept articulated in Public Service Co. v. Seabrook, 126 N.H. 740, 742 (1985); Public Service Co. v. New Hampton, 101 N.H. 142, 146-48 (1957) that due to the Center's uniqueness and interdependence, the Taxpayer could be considered a hypothetical buyer.

The Center was developed originally to enhance the marketability of the units and to provide an ongoing recreational facility to the unit owners. Despite the financial difficulties of the development in 1991 and its partially built-out status, the board finds the Center's highest and best use continues the same as its original purpose. The Town argued the Center continued to have a value similar to its original cost of in excess of \$1,000,000. On the other hand, the Taxpayer argued the value was best indicated by the resale by BWDP to DPPOA after purchase by BWDP of the Center at foreclosure auction. The board rejects both of these arguments as not being representative of the various factors affecting the Center's value.

Negative factors affecting the Center's value include:

- 1) the overhead and operating costs of managing the Center;
- 2) the Center's location in the middle of the development, making it less desirable for

alternative or supplementary uses; and

3) the apparent lack of demand in the area for such community meeting space and athletic facilities independent of planned developments.

Positive factors affecting the Center's value include:

1) the good quality materials and workmanship of the Center;

2) the enhanced value it contributes to existing and future units

3) its use as the site for the sales office and the focal point for marketing of the development; and

4) the practical use of the building for community meeting purposes and recreational purposes.

The board finds there is no one definitive manner in which to arrive at an estimate of value for the Center; rather by weighing the factors listed above and the evidence submitted by the parties, the board concludes the market value of the Center in 1991 was approximately \$450,000.

The developer had only two ways in which to recapture the Center's up-front investment: 1) the enhanced market value of the units and 2) the rental income from leasing the Center to the homeowners' association. The board gives no weight to any value indication derived from capitalizing the income from the original lease because: 1) the lease was between the declarant (The Satter Companies of New England) and DPPOA when the declarant still had controlling membership in DPPOA; and 2) the rental rate was not shown to be reflective of market rent. The board does

consider the Center's enhancement

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of the unit's market value in two of the following three methods of estimating value.

The board concluded there were three general ways to estimate the value of the Center. While the board is not comfortable with any one of these three methods

by itself, collectively they provide an indication of the Center's value.

First, the intrinsic value of the Center remaining to the developer was estimated by determining the pro-rata portion (130 approved but not marketed units ÷ 315 total approved units) of the replacement cost of the Center. The Town estimated approximately \$1,200,000, and the Taxpayer listed its cost at \$1,700,000 (Munic. Exhibit A).

$$130/315 \times \$1,200,000 = \$495,238$$

$$130/315 \times \$1,700,000 = \$701,587$$

Both these calculations exceed the board's estimate because the 1991 market would likely question whether the entire 130 remaining approvals could be financed, built and marketed before the subsequently extended 1997 deadline of the condominium approvals.

Second, the board estimated the incremental value the Center enhances the sales price of each unit (or quarter interest) and discounted this enhanced value over the estimated remaining economic life span of the project. Here, because of the number of assumptions and estimates involved in this approach, the value conclusion is by itself subject to debate. Nonetheless, the reasonable estimates made by the board based on the evidence submitted also indicated a value range of approximately \$400,000 to \$500,000.

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Third, the board reviewed the Taxpayer's sales of health club facilities and adjusted the sales for: 1) the lesser quality of many of the buildings; and 2) the fact that most of the sales occurred as the result of or after financial problems (foreclosure, bankruptcy, auction by mortgagee, etc.). The board has consistently held that financially duressed sales, while influencing market value, are not normally

reflective of market value. RSA 75:1 requires that assessments be based on market value. "Market value is the cash price a property would bring in a competitive and open market. In such a market, sufficient time has been allowed for a sale, the buyer and seller are not subject to undue pressure, and both are well informed." The International Association of Assessing Officers, Property Appraisal and Assessment Administration, 35 (1990); see also Society Hill At Merrimack Condominium Association v. Town of Merrimack, \_\_\_ N.H. \_\_\_, slip op. at 2 (December 28, 1994) (fair market value defined as "the price which in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy, taking into account all considerations that fairly might be brought forward and reasonably given substantial weight and such bargaining."). Based on these definitions, we find the sales of many of the health club properties are not representative of market value and would need to be adjusted for that factor. See Society Hill, \_\_\_ N.H. at \_\_\_, slip op. at 1-3 (supreme court affirmed superior court's conclusion that condominium auction sales did not represent market-value sales). Adjusting the sales for these factors, indicates a value per square foot in the \$20 to \$30 range (market value of \$360,000 to \$540,000).

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Based on the above, we arrived at a 1991 \$450,000 market value for the center.

### **Land Component Value**

The board will first address the value of the units built but not sold as of April 1, 1991. The board finds an adjustment is warranted.

The Taxpayer chose to focus its arguments on the Town's land assessment of

those units built but not sold as of April 1, 1991, and submitted very little evidence as to the total value of the units. 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. at 217.

The Taxpayer argued that while no sales of units occurred from early 1990 until 1993, the market value of the units in 1991 would have been no higher than the 1993 level when units began to sell again at approximately 60% of their 1990 level. The Town countered by stating in 1994 units were back up selling at the 1990 level.

The board finds the determination of the market value of these units is surely similar to "a snipe hunt carried on at midnight on a moonless night." Fusegni v. Portsmouth Housing Authority, 114 N.H. 207, 211 (1974)(citations omitted.).

However, considering, as of April 1, 1991, the Town assessed the units at retail value with no wholesale or other adjustment, the poor real estate market, the troubled banking situation, the January 1990 closing of the Satter Co., the July 1990 refusal by DPPOA to ratify the lease and pay rent Page 11  
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for the Center and the December 1990 closing of the Center, the board finds some adjustments need to be made to the units to reflect the influence of these factors.

Based on the evidence the board finds the assessments of the 57 quarter-share interests and 12 whole interests (designated with "\*" in table at beginning of decision) should be reduced by 25% for 1991, 15% for 1992 and no reduction for 1993 and 1994. These adjustments differ because in 1992 the Center had reopened and in 1993 the Center had been repurchased from FDIC by the restructured developer

(BWDP) and units were again being marketed at reduced prices to get the development "jump started." While this decision deals primarily with the 1991 tax year, the board is mindful of the decision's effect on subsequent tax years. See RSA 76:17-c and Tax 203.05. Therefore, because evidence was provided of improved market value for the subsequent years, this decision will include findings for subsequent years.

### **Development Rights**

The board finds the Taxpayer failed to carry its burden and prove the remaining development rights (map and lot 204.002.098) were improperly assessed.

First, the board finds the Town significantly discounted (75%) the \$6,000 site value that had been derived by the land residual method from sales of completed units. The Town's assessment, if equalized by the 1991 ratio of .48 indicates, a market value per undeveloped site of \$3,125 ( $\$6,000 \times .25 \div .48$ ).

Second, the Taxpayer based its \$800 per-unit estimate on an analysis of six sales performed by Fremeau Appraisal, Inc. (Exhibit - Taxpayer #3), which Page 12 FDIC v. Town of Woodstock Docket No.: 12129-91PT

indicated a range of values for sites from \$535 to \$3,582. The board finds all six sales were not market value sales due to duress on the part of the grantor. Four of the sales had either FDIC or Hilco Property Services, Inc. as the grantor, one sale was the resale by the second mortgage holder after acquisition at foreclosure auction, and the last sale was a liquidation sale by auction. (Nevertheless, even these less than perfect sales establish a range in which the Town's equalized valuation falls). Further, the Fremeau analysis relied heavily on sale #1, an abutting unimproved tract approved for 60 condominiums. The board finds this sale is not comparable without significant adjustments because, not only is it a Hilco sale, but it is entirely unimproved whereas the Taxpayer's sites are part of a largely improved

development with most of the infrastructure existing (Center, roads and utilities etc.).

Therefore, the board finds the Town's discounted site value to be reasonable and, in a general fashion, supported by the less than perfect sales submitted by the Taxpayer.

### **Tax Refund**

If the taxes have been paid, the amount paid on the value in excess of the assessments found above 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 the overpayment found for 1992, 1993 and 1994 consistent with this decision. 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.

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### **Rehearing Procedure**

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 in 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. Generally, if the board

denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

\_\_\_\_\_  
Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert E. Murphy, Jr., counsel for the Taxpayer; and Chairman, Selectmen of Woodstock.

Dated: July 11, 1995

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Valerie B. Lanigan, Clerk

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