

Theodore L. Mueller

v.

Town of Greenland

Docket Nos.: 12754-92PT and 13770-93PT

DECISION

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

<u>Map/Lot #</u>	<u>Land Assessment</u>	<u>Building Assessment</u>	<u>Total Assessment</u>
R-11-1A	\$ 66,700	\$ 183,700	\$ 250,400
R-11-1B	\$ 67,400	\$ 195,700	\$ 263,100
R-11-1C	\$ 66,800	\$ 195,700	\$ 262,500
R-11-1D	\$ 67,100	\$ 195,700	\$ 262,800

on 4 duplex dwellings and garages (the Properties). For the reasons stated below, the appeal for abatements 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 this burden and proved disproportionality.

The Taxpayer presented extensive exhibits too lengthy to reiterate in detail. However, in summary, the Taxpayer argued the assessments were excessive because:

- (1) all four properties sold in 1993 and 1994 for \$165,000 to \$170,000 with various incentives offered by the Taxpayer (financing of first or second mortgages, closing costs, options on adjacent land and a second lot), which indicate a net transaction value range of \$135,000 to \$165,000;
- (2) appraisals done by Buxton et al, Inc. estimated the market values as of April 1992 in the \$152,000 to \$155,000 range;
- (3) the Properties are unique due to their style and layout; however, sales of duplexes in Greenland indicated a price per-square-foot (\$57.57) less than the equalized value per-square-foot; and
- (4) the Town's argument of applying a 1.35 ratio to these Properties is not allowed because it is a higher ratio for the two years under appeal than the DRA's ratio and is precluded by the Appeal of James Andrews, 136 N.H. 61 (1992).

The Town argued the assessments were proper because:

- (1) the Taxpayer was a highly motivated seller and has subsequently sold all of his property in the Town;
- (2) the Properties were not listed with a broker and were sold privately and, thus, do not meet the definition of market value, which requires proper exposure to the market;
- (3) an analysis of the assessments of comparable properties indicates the Properties

were proportionately assessed; and

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(4) the Town has had a consistently low coefficient of dispersion, which indicates consistent assessment equity.

Board's Rulings

Based on the evidence, we find the market value and the correct assessments should be as follows:

<u>Map/Lot #</u>	<u>Market Value</u>	<u>Equalization Ratio</u>	<u>Assessment</u>
R-11-1A	\$ 165,000	1.22	\$ 201,300
R-11-1B	\$ 170,000	1.22	\$ 207,400
R-11-1C	\$ 170,000	1.22	\$ 207,400
R-11-1D	\$ 170,000	1.22	\$ 207,400

There are three approaches to value: 1) the cost approach; 2) the comparable sales approach; and 3) the income approach. Appraisal Institute, The Appraisal of Real Estate at 71 (10th Edition 1991); International Association of Assessing Officials, Property Assessment Valuation at 38 (1977). While there are three approaches to value, not all three approaches are of equal import in every situation. The Appraisal of Real Estate at 72; Property Assessment Valuation at 38. In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal that is reviewing the valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979). Given the evidence in this appeal, we find the market approach is the most appropriate approach to value. The parties stipulated that the highest and best

use of the Properties was not as investment rental property. Thus, the

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income approach is an appropriate method to estimate value. The Properties were constructed in 1986 and 1987. However, the 1992 and 1993 market was generally recognizing values for existing property at below late 1980's cost levels. Thus, the cost approach is not appropriate.

The Taxpayer presented two general types of market evidence relative to the Properties. First, the Taxpayer presented several appraisals done by three different appraisers during the 1992 to 1994 time period. Second, the subsequent sales of the Properties in 1993 and 1994 were presented as evidence of their market value for the years under appeal.

The board, in its analysis, has placed most weight on the sales of the Properties and little weight on the appraisals submitted for the following reasons. The appraisals are given little weight because both parties stated there were few sales of comparable duplex properties in Greenland from which to extract a reasonable estimate of market value. This was supported by the board's questioning and review of the appraisals submitted, which contained inconsistent adjustments amongst appraisers and the use of sales that were too dissimilar in quality and location. Further, because the sales that were available were so dissimilar, the magnitude of the various adjustments are questionable and lacked adequate documentation to be relied on. Further, the board noted, based on the testimony and corresponding assessment-record cards submitted, a number of the comparables were either resales from lending institutions or were as the result of settling an estate. Such sales, while

perhaps common for this time period, do not meet the qualification of market value sales and either should not be used or, if used, adjustments made to attempt to equate the transactions to market value.

The sale of the subject property, if there is no evidence submitted to disqualify it as an arm's-length transfer and if generally conforming to other general market data, is given considerable weight by the board in its deliberations. Appeal of Lakeshore Estates, 130 N.H. 504 (1988). In this case, the board finds that, while the transaction had both positive and negative factors affecting the consideration price as being reflective of market value, the sales are given considerable weight with some adjustments.

The Town argued that the sales were not open market transfers and not reflective of market value for two general reasons. First, they argued the Taxpayer was a highly motivated seller interested in closing out his New Hampshire property holdings and subsequently retiring to Florida. Second, the Town argued the properties were not listed through a real estate broker but were rather marketed by the owner through signage and newspaper advertisements. The Taxpayer's agent (Agent), on the other hand, argued the Taxpayer was no more motivated to sell than any other seller and was under no pressure to liquidate his assets for financial reasons. Further, the Agent stated the owner chose not to list the Properties with a broker because multiple showings done by realtors would have interfered with the rental capabilities of the Properties. Further, the Taxpayer argued the incentive concessions negotiated and granted by the seller indicated the considerations were

indeed arm's length and reflected the best price available.

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The board finds there is merit in both parties' arguments given the evidence and testimony before the board. Consequently, the board finds the sales prices should be adjusted both in a negative and positive manner. The board finds that, because the transactions were private sales without the use of a broker, there was a strong possibility that the saving of the brokerage fee was a factor in the negotiated price. Further, the board agrees with the Town that the manner of marketing by the Taxpayer did not provide as full exposure to the market as a normal brokerage listing and likewise could be a factor affecting the final sales price. Offsetting in a negative direction are the incentive considerations the seller provided the buyers (closing costs, below- market financing and additional land). The board finds the positive and negative factors to be approximately offsetting and that the actual stated sales price of \$170,000 for Lots 1B, 1C and 1D and \$165,000 for Lot 1A are reasonable indications of market value of the properties in late 1993 and 1994.

The board finds no evidence to time adjust the 1993 and 1994 sales to the 1992 and 1993 market. All evidence submitted tends to indicate the real estate market was relatively stable during that time period. The equalization ratios from 1991 to 1994 indicated relatively little change (1991-122%; 1992-122%; 1993-126%; and 1994-123%). Further, the Taxpayer's appraisals for the 1994 time period indicated that the market at that time was relatively stable. Only the Buxton appraisals, which used sales prior to 1992, indicated a declining market for those earlier years.

Therefore, the board finds the proper market values for both 1992 and 1993 to be \$165,000 for Lot 1A and \$170,000 for Lots 1B, 1C and 1D. Equalized by the 1992 equalization ratio,¹ the proper assessments are:

1A - \$201,300
1B - \$207,400
1C - \$207,400
1D - \$207,400

If the taxes have been paid, the amount paid on the value in excess of the assessments listed 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, unless the Town/City has undergone a general reassessment, the Town/City shall also refund any overpayment for 1994. Until the Town/City undergoes a general reassessment, the Town/City 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 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

¹The board has chosen not to equalize the assessments in 1993 by the 1.26 ratio because it has earlier found the 1991-1994 market was relatively stable.

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

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David F. Choate, III, representative for the Taxpayer; and Chairman, Board of Selectmen of Greenland.

Dated: October 31, 1995

Valerie B. Lanigan, Clerk