

**Allen E. and Patricia E. Strasser, Jr.**

**v.**

**Town of Bedford**

**Docket No.: 15385-94PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$101,100 (land \$25,000; buildings \$76,100) on a condominium unit in the Ridgewood Condominiums (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property's electric heat detracts from the value -- units with natural gas sell for \$10,000 - \$15,000 more than units with electric;

(2) the average sale price for comparable units was \$73,875;

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(3) the Property was purchased in December 1993 for \$69,000, and the price included \$1,600 for appliances;

(4) the Town's 1994 ratio was 115%, yet the Property's assessment-to-sale ratio was 150%;

(5) a December 3, 1993 appraisal estimated a \$71,000 value for the Property, including appliances, and an identical unit sold in September 1994 for \$71,000;

(6) the Property had a \$70,000 market value as of April 1, 1994;

(7) the Town's comparables were not comparable in size, the sales did not occur within a 6-month period of the assessment date, and the adjustments were flawed; and

(8) the Property's prior bank sales were due to a title defect.

The Town argued the assessment was proper because:

(1) the Taxpayers' comparable sales analysis was flawed because only selective sales were used;

(2) a similar unit with electric heat sold in October 1993 for \$78,000;

(3) comparable properties' sale prices supported the Property's assessment;

(4) the Property was sold three times in 2 months -- twice to a bank and lastly to the Taxpayers;

(5) the Taxpayers' appraisal was flawed because the adjustments were not indicative of the market, e.g., the time adjustment should have been 4% per year and not 6% as stated by the Taxpayers;

(6) the Taxpayers' purchase was distressed and the price paid was not reflective of true market values; and  
(7) one of the Taxpayers' comparables was not an arm's-length transaction and the Taxpayers ignored a valid \$78,000 sale.

The board's inspector, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. In this case, the inspector only reviewed the file; he did not perform an on-site inspection. The board's inspector suggested an abatement. (See Table below for value range.) 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.

#### **BOARD'S RULINGS**

Based on the evidence, the board finds the proper assessment should be \$89,700, which equates to a \$78,000 market value.

It is essential to remember that valuing property is not a precise science. This is especially true when valuing condominiums during the transitional market that followed the substantial downturn in condominium values. The board has reviewed the parties' briefs and rebuttals, the board's inspector's report and the parties' responses to that report. The ordered assessment is based on the board's market value conclusion, which was arrived at after reviewing all of the parties' information. The following chart summarizes the value ranges presented to the board in this case and another

case.

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	<b>Dimos</b>	<b>Strasser</b>
Review Appraiser	\$69,000 to \$72,900	\$69,900 to \$76,400
Town	\$77,400 to \$76,900	\$75,500 to \$79,000
Taxpayer	\$72,800	\$71,300

Based on this information, the board has made a market value finding of \$78,000, which equates to an \$89,700 assessment.

If the taxes have been paid, the amount paid on the value in excess of \$89,700 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 (copy attached), unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. RSA 76:17-c allows the Town to adjust these ordered assessments when a good-faith basis exists. The Town submitted sales that indicated the market for these condominiums improved in tax year 1996. Therefore, for tax years 1996 and thereafter, the Town could use the sales to make good-faith adjustments to the ordered assessments. If the Taxpayers disagree with the Town's adjustment in 1996, the Taxpayers can file a motion under TAX 203.05 (j). The Taxpayers should, however, be aware that the board's review would be limited to whether the Town had a good-faith basis to adjust the ordered assessment. Recent sales generally provide a good-faith basis.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all

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of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Allen E. and Patricia E. Strasser, Jr., Taxpayers; and Chairman, Selectmen of Bedford.

Date: August 2, 1996

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Valerie B. Lanigan, Clerk

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