

Helen T. Custeau

v.

Town of Goffstown

Docket No.: 15960-95PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$69,300 on a residential condominium unit in the Country Squire 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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased in March 1995 for \$43,000,
- (2) a January 1995 appraisal estimated the value to be \$45,000, and

(3) the Property had some undiscovered physical obsolescence at the time of the purchase.

The Town argued the assessment was proper because:

- (1) eight comparable sales support the assessed value;
- (2) the purchase was not arm's-length;

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- (3) two of the Taxpayer's comparable sales were immediately following foreclosure auctions;
- (4) the finished basement in the Property is not being assessed; and
- (5) all condominium assessments in the Country Squire development were lowered by 20% in 1992 to reflect market changes.

#### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$67,000 (building \$42,000; amenities \$25,000). The board has reviewed the sales data supplied by both parties. The Taxpayer's comparables 1 and 2 were foreclosure sales. The board has consistently held that bank sales are by definition not arm's-length transactions and require some adjustment because banks are not your typically motivated sellers. The board has also seen both through its own studies and the studies of others, that bank sales typically sell for less than market sales. The Taxpayer's comparable 3 is located in Morgan Estates. Both parties agreed that Morgan Estates units had higher values because, among other reasons, the development is smaller with better access to the highway. Therefore, the board has given little weight to the Taxpayer's appraisal report.

Likewise, the board has given little weight to the Town's comparables 5

through 8 because they were also located in Morgan Estates. The Town's comparables 1 through 3 were located at Country Squire and comparable 4 was located at Plummer Place. The Plummer Place sale was substantially smaller than the Property (effective area of 1,036 feet versus the Property's 1,313 feet); therefore, in making its decision, the board has reviewed the Town's comparable sales 1 through 3 located at Country Squire and the Taxpayer's evidence regarding the purchase of the Property.

The Taxpayer purchased the Property on March 28, 1995. The prior owner had been foreclosed on and the Property was taken back by HUD who sold it to the Taxpayer. As stated above, by definition, this type of sale is not considered an arm's-length transaction and some review is required to

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estimate its market value. Town comparable 1 sold on March 31, 1995, three days after the Property was purchased, for \$51,500. This property contained an effective area of 1,331 square feet yet was built in 1979 (the subject was built in 1985). In assessing the property, the Town applied 9% depreciation for age versus the subject's depreciation of 3%. Comparable 2 sold on August 1, 1995 for \$49,900. This property contained an effective area of 1,240 square feet and was built in 1982. The Town applied 6% depreciation for age.

Comparable 3 sold on September 15, 1995 for \$62,000, had an effective area of 1,366 and was built in 1985, the same as the subject, thus depreciated by 3%.

While the Town compared the assessed value per square foot of effective area of the Property and comparables, the board has compared the selling price per square foot as follows:

Comp. 1	1,331 square feet	\$38.69 per square foot
Comp. 2	1,240 square feet	\$40.24 per square foot

Comp. 3	1,366 square feet	\$45.38 per square foot
<b>Subject</b>	<b>1,313 square feet</b>	<b>\$32.75 per square foot</b>

This exercise supports the board's and the Town's conclusion that the purchase of the Property was below market. However, based on square footage alone, it also indicates a range of value for the Property of \$50,800 to \$59,600. None of the comparable sales had electric heat and there was no evidence submitted regarding any deferred maintenance at the time of sale of any of the comparables. The Property had electric heat and the Taxpayer described several areas of deferred maintenance on the Property, i.e. rotted sub-flooring in the kitchen, leaks in water pipes, etc. The board finds some adjustment for these factors should be applied to the assessed value.

Based on the evidence, the board finds a 2% functional depreciation should be applied for electric heat and 3% physical depreciation to account for the physical deficiencies in the Property. The Taxpayer indicated that the heat had been converted and many of the other items had been repaired in

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1996; therefore, these adjustments are for tax year 1995 only. The board finds this revised assessment of \$67,000 when equalized by the 1995 135% equalization ratio for the Town indicates an approximate market value of \$49,600.

If the taxes have been paid, the amount paid on the value in excess of \$67,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Helen T. Custeau, Taxpayer; and Chairman, Selectmen

of Goffstown.

Date: April 9, 1997

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Valerie B. Lanigan, Clerk