

**Buchmiller 1991 Intervivos Trust**

v.

**City of Laconia**

**Docket No.: 18563-00PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” tax year 2000 assessment of \$156,200 on a residential condominium (Unit 6 of Wildwood Village at 12 Wildwood Road) (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show 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 waterfront “view” factor employed by the City is unwarranted because the pond is quite modest in size ( $\pm 4$  acres), is shallow and has a visible drainage culvert which reduces contributory value, especially since, in comparison, views from some other units (of trees, lawns and other vegetation) are as desirable as the pond view;
- (2) the pond was created by the developer of the complex to fulfill a wetlands requirement and is not an impressive (“magnificent”) body of water; and
- (3) the Property is very similar to another unit (6 Wildwood Road) in Wildwood Village and should be valued and assessed comparably, instead of at a higher level.

The City argued the assessment was proper because:

- (1) the City adjusted the 2000 tax year assessment to correct an error in the garage assessment (increase from \$3,400 to \$8,000);
- (2) the Property has a view of the pond, and therefore, a view factor (109%) is proper; and
- (3) the Taxpayer failed to meet its burden of proof.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayer is entitled to an abatement based on a revised assessment of \$144,200.

The main issue in this case is whether the Property warrants a view adjustment factor. Due to its location at the end of the small pond, the Taxpayer argued the Property’s view is not as attractive as some others located on the small pond in Wildwood Village. The Taxpayer provided photographs showing views both from the Property and from across the pond showing a culvert near the Property that either empties into the pond or allows water to drain from the pond. The Taxpayer testified the pond was not a naturally-occurring body of water, but rather an

area created by the developer to comply with wetland mitigation requirements. For all these reasons, the Taxpayer argued the City's 1.09 view factor was unwarranted.

During the hearing, the board questioned the City regarding the methodology used in determining the view factor. The factor the City employed appeared to be the result of some specific calculations rather than a subjective or qualitative adjustment such as 5%, 10% or 15%. The City, however, did not defend the factor by submitting any sales, calculations or other information showing that a view similar to the Property's warranted an adjustment. The photographs provided by the parties showed some properties in the condominium complex had better views of the water than others but, given the Property's location at one end of the pond, combined with the relatively small size of the pond (approximately four acres), the board finds a view factor enhancement is not warranted for the Property.

Therefore, the board finds a revised assessment of \$144,200 (rounded) is proper based on the removal of the 1.09 view factor and the revised garage assessment of \$8,000.

If the taxes have been paid, the amount paid on the value in excess of \$144,200 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 City has undergone a general reassessment, the City shall also refund any overpayment for 2001 and 2002. Until the City undergoes a general reassessment, the 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 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

---

Paul B. Franklin, Chairman

---

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Gordon A. Buchmiller, Taxpayer; and Chairman, Assessors of Laconia.

Date: December 10, 2002

---

Anne M. Bourque, Deputy Clerk

Page 5  
Buchmiller v. City of Laconia  
Docket No.: 18563-00PT

**Buchmiller 1991 Intervivos Trust**

**v.**

**City of Laconia**

**Docket No.: 18563-00PT**

**ORDER**

This order responds to the “Taxpayers’” March 16, 2003 correspondence.

Pursuant to TAX 203.05(j), the board is treating the correspondence as a Motion for Enforcement (“Motion”).

The board has scheduled a hearing on the Motion for April 25, 2003, at 9:00 a.m. in the offices of the board located at 107 Pleasant Street, Johnson Hall, Third Floor, Concord, New Hampshire.

At the hearing, the City is to provide the board with the revised assessment record card(s) for the “Property” located at 12 Wildwood Road for the years in question, as well as any other relevant evidence.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Douglas S. Ricard, Member

---

Albert F. Shamash, Esq., Member

Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Gordon A. Buchmiller, Trustee for Buchmiller 1991 Intervivos Trust, 12 Wildwood Road, Laconia, New Hampshire 03246, Taxpayer; and Chairman, Board of Assessors for the City of Laconia, 45 Beacon Street East, Laconia, New Hampshire 03246.

Date:

---

Anne M. Bourque, Deputy Clerk

**Buchmiller 1991 Intervivos Trust**

**v.**

**City of Laconia**

**Docket No.: 18563-00PT**

**ORDER**

**I. Introduction**

**A. Taxpayer's Motion to Enforce**

The board held a limited hearing on August 20, 2003 with respect to a motion to enforce (the "Motion") pertaining to the Decision entered on December 10, 2002 (the "Decision"). The Motion, timely filed by the "Taxpayer" pursuant to TAX 203.05(j), seeks clarification that the "City" is required to apply the abatement ordered by the board for tax year 2000 to subsequent tax years 2001 and 2002, and to refund alleged overpayments of taxes for those years. For the reasons discussed below, the Motion is granted.

The Motion addresses the City's imposition of a "view factor" in tax years 2001 and 2002 – a factor the board removed when it granted a tax year 2000 abatement in the Decision. The City's response is that no such relief is proper because the City performed a "general reassessment each year based on the market" (see Taxpayer Exhibit 1), resulting in new

assessments in tax years 2001 and 2002 which are not subject to the Decision. The City's response raises legitimate issues concerning the application of RSA 76:17-c (Effect of Abatement Appeal on Subsequent Taxes).

Also of relevance are the board's rules pertaining to these issues. TAX 203.05(f) gives the board continuing jurisdiction "in accordance with RSA 76:17-c" and TAX 203.05(g) and (h) require the municipality to use the ordered assessment in subsequent tax years unless "there is a good faith reason for [an] adjustment in accordance with RSA 75:8 and RSA 76:17-c." In addition, TAX 203.05(k) states the municipality "shall have the burden to make a showing that a good-faith reason existed for not using the ordered abatement. If such a showing is made, the burden shall shift to the Taxpayer to prove no good-faith reason existed."

#### B. Arguments Presented

The Taxpayer argued:

- (1) in the Decision, the board abated the assessment to \$144,200 for tax year 2000, resulting in a refund, including interest, for any overpayment of taxes for that year, and further ordered: "Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the City has undergone a general reassessment, the City shall also refund any overpayment for 2001 and 2002. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.";
- (2) while the City lowered the assessment and refunded the overpayment for tax year 2000, it did not do so for tax years 2001 and 2002; and
- (3) although the City may have performed some form of a general reassessment and changed base rates and other valuation factors pertaining to the Property, resulting in higher assessments

in these subsequent years, it cannot in good faith ignore the Decision by the board that the specific adjustment factor applied to the Property (1.09 in tax years 2000 and 2001 and 1.07 in tax year 2002, discussed further below) is not appropriate and should be removed.

The City argued:

- (1) in 1994, it acquired hardware and software enabling it to update and maintain property assessments based on market values annually and it did so in both tax years 2001 and 2002;
- (2) its activities in each year constitute a “general reassessment” and resulted in increasing the assessment of the Property to \$183,900 and \$190,500 in tax years 2001 and 2002, respectively (see Municipality Exhibit B); and
- (3) because of this annual activity, the Taxpayer is not entitled to lowered assessments in 2001 and 2002 or any refund of taxes paid for those years under RSA 76:17-c.

## **II. Board’s Rulings**

The board has carefully reviewed the Decision abating the assessment from \$156,200 to \$144,200 for tax year 2000, as well as the rationale presented by the City as to why it has no obligation to apply the Decision to tax years 2001 and 2002 and remove the view factor adjustments. The board finds the City’s reasoning, while relying on a plausible interpretation of RSA 76:17-c, is not applicable to the specific facts pertaining to the Decision and the Motion.

The board lowered the assessment for tax year 2000 based on specific findings which the City did not contest on a timely basis (through a motion for reconsideration, for example). In the Decision, the board found the 1.09 view factor applied to the Property in tax year 2000, but not

to other units within the same development, was not warranted and should be removed.<sup>1</sup> These specific findings were based on the evidence presented and the board's utilization of its own experience and expertise. See RSA 71-B:1.

From the information on the submitted assessment-record cards (summarized in Addendum A attached hereto), it is clear the City did not remove the view factor when it assessed the Property in tax years 2001 and 2002 (but did slightly reduce its magnitude from 1.09 to 1.07 in tax year 2002), presumably because these assessments were in place prior to the issuance of the Decision on December 10, 2002. The City has elected not to remove the view factor since that time, prompting the Motion filed by the Taxpayer.

Although the board is granting the Motion, the City can be commended for its efforts to conduct annual reviews and updates to improve assessment equity and proportionality. The City stated that it had a database of at least 600 qualified sales which it utilized. The availability of this additional information, however, does not negate the board's specific finding that applying a view factor to the Property in tax year 2000 was inappropriate. The board finds this to be just as true for the subsequent tax years 2001 and 2002.

While property values may have changed throughout the City and in this condominium complex in 2001 and 2002, as reflected by changes in the base rates and other factors implemented by the City, there is no evidence to support the City's position that a higher relative valuation for the Property (based specifically on the application of either a 1.09 or 1.07 view

---

<sup>1</sup> The board also ruled it was proper for the City to increase the garage assessment from \$3,400 to \$8,000 in tax year 2000, but neither party disputes the application of this aspect of the Decision to the Property. The board notes the City apparently increased the garage assessment from \$8,000 to \$15,000 in 2002 which the Taxpayer has not challenged. See Addendum A, attached hereto, for a summary table showing the components of the City's assessment in each year.

factor compared to other units in the condominium complex) is justified.<sup>2</sup>

This ruling preserves fundamental fairness and is consistent with the board's reading of the statute and the case law. The purpose of RSA 76:17-c is to remedy the "mischief" of requiring taxpayers to file separate abatement applications and appeals each year based on the same issue(s) already under appeal from a prior tax year. See Appeal of Town of Newmarket, 140 N.H. 279, 283 (1995). Since the same issue was decided in the tax year 2000 appeal, the Taxpayer was not required to file separate tax appeals in tax years 2001 and 2002 to preserve the issue that the Property was overassessed because the view factor is not appropriate.

If the City's contrary interpretation is correct, every taxpayer with a tax appeal pending in a municipality undergoing some form of annual reassessment would have to file a new abatement application and appeal on the same issue each year for an indefinite period or else face the loss of the right to challenge an allegedly disproportional and inequitable assessment. This would be a needlessly time-consuming and expensive exercise for taxpayers, the board and the courts. Instead, under RSA 76:17-c, the Taxpayer is entitled to have the board's ruling on this issue enforced in subsequent years, absent any evidence from the City that supports the application of a view factor to arrive at a fair and equitable assessment on the Property.

When a reassessment is performed, it does not necessarily negate or make inapplicable

---

<sup>2</sup> Nothing in this Order is intended to preclude the City from establishing and presenting such evidence in the future. If additional market data exists or can be developed, neither the statute at issue in this case (RSA 76:17-c) nor the board's specific findings would prevent the City from using an appropriate view factor, provided it does not result in a disproportionate or inequitable assessment.

all of the specific findings made by the board for one tax year on subsequent tax years. This may occur in some instances, such as when the abatement pertains to market value evidence and the reassessment reflects changes in market values in subsequent years. Cf. Sprague Energy Corp. v. Town of Newington, 142 N.H. 804, 806-07 (1998). In other cases, however, such as when the municipality makes a fundamental error in calculating square footage (2,500 square feet rather than 2,000 square feet, for example), and the error persists after the reassessment, the taxpayer is entitled to a correction in subsequent years. The board finds the Motion presents a situation analytically closer to the latter example.

The board orders removal of the view factor because there is no evidence the subsequent year “reassessments” undertaken by the City addressed the view factor issue raised by the Taxpayer or established any quantifiable market evidence to support its use. As noted in the Decision at page 3:

“During the hearing, the board questioned the City regarding the methodology used in determining the view factor. The factor the City employed appeared to be the result of some specific calculations rather than a subjective or qualitative adjustment such as 5%, 10% or 15%. The City, however, did not defend the factor by submitting any sales, calculations or other information showing that a view similar to the Property’s warranted an adjustment.”

In these circumstances, the board finds the City did not meet its initial burden of proving it had a good faith reason for not using the ordered abatement in subsequent tax years 2001 and 2002.

See TAX 203.05 (k), supra.

In summary, the board finds the Motion has merit and should be granted. Removing the view factors (1.09 and 1.07) results in an abatement to \$169,600 (rounded) in tax year 2001 and \$179,200 (rounded) in tax year 2002, as further set forth in Addendum A to this Order. The Taxpayer is entitled to a prompt refund from the City of any overpayments for these years, together with interest at six percent per annum from date paid to refund date. See RSA 76:17-a.<sup>3</sup>

A motion for rehearing, reconsideration or clarification (collectively “rehearing motion”) of this Order must be filed within thirty (30) days of the clerk’s date below, not the date it 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). 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 of the board’s denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

<sup>3</sup> The City is further urged to review this Order and the Decision before assessing the Property for subsequent tax years, as required by RSA 76:17-c. Paragraph III of this statute gives the board “continuing jurisdiction over any abatement granted . . . for purposes of enforcing the requirements of this section.”

Paul B. Franklin, Chairman

---

Douglas S. Ricard, Member

---

Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Buchmiller 1991 Intervivos Trust, Taxpayer, 12 Wildwood Road, Laconia, N.H. 03246; and Kathy Temchack, Assessor, and Chairman, Board of Assessors, 45 Beacon Street East, Laconia, N.H. 03246.

Date: November 19, 2003

---

Anne M. Stelmach, Deputy Clerk

**Addendum A**

**Buchmiller 1991 Intervivos Trust v. City of Laconia, BTLA Docket No. 18563-00PT**

**Information Compiled from the City's Assessment Record Cards**

	<b>Tax Year 2000</b>	<b>Tax Year 2001</b>	<b>Tax Year 2002</b>
Square footage	1,988	1,988	1,988
Base rate	\$63.00	\$67.00	\$73.00
Size adjustment factor	0.80181	0.80181	0.80181
Grade	1.31	1.31	1.31
Nbhd Adjustment	1.25	1.4	1.3
View Factor ("Floor Adj.")	1.09	1.09	1.07
Adjusted Base Rate	\$90.16	\$107.39	\$106.66
"Overall % Cond." (to reflect depreciation)	0.81	0.81	0.81
Depreciated Building Value	\$145,182.84	\$172,927.97	\$171,752.46
Rounded	\$145,200.00	\$172,900.00	\$171,800.00
Additional features	\$3,000.00	\$3,000.00	\$3,700.00
Garage	\$8,000.00	\$8,000.00	\$15,000.00
Total Assessment on Card	\$156,200.00	\$183,900.00	\$190,500.00
<b>Board ordered abatement:</b>			
(Omitting view factor)	\$144,195.27		
Rounded	<b>\$144,200.00</b>		
<b>Board's subsequent year abatement findings:</b>			
(Omitting view factor)		\$169,649.51	\$179,216.32
Rounded		<b>\$169,600.00</b>	<b>\$179,200.00</b>