

YYY II, LLC

v.

Town of Pembroke

Docket Nos.: 23577-07PT/24337-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2007 and 2008 assessments of \$63,000 for certain rights arising under an April 29, 2005 Lease Agreement (“Lease”) regarding “portions of the improvements” on real property located on Map 243, Lot 100, 100 Main Street (the “Property”). The parties stipulated at the hearing that, if taxable, these rights should be assessed against the Taxpayer at \$25,000 in each tax year (until the next revaluation in 2014) rather than the higher \$63,000 in the original assessments. For the reasons stated below, the appeals are partially granted, but only to the now stipulated \$25,000 assessment.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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). Id. The board finds the Taxpayer failed to carry its

burden of proving the Town's assessments were unlawful, but the assessments are abated to the lower stipulated amounts for tax years 2007 and 2008.

The Taxpayer argued the assessments were unlawful because:

- (1) the Lease (Taxpayer Exhibit No. 1) was entered into between related parties -- the Taxpayer, as Lessor, and Millyard Laundry Services, LLC ("Millyard"), as Lessee -- and both entities, organized as limited liability companies (LLCs), are part of the "Brady Sullivan Family" of companies;
- (2) the Property was acquired by the Taxpayer when it was the Emerson Mills Apartments and was then converted into 71 condominiums (the Emerson Mills Condominiums) as a result of the May 11, 2005 Declaration of Emerson Mills Condominium ("Declaration," Taxpayer Exhibit No. 2, excerpted in Taxpayer Exhibit No. 3);
- (3) the Lease, entered in April, 2005 just before conversion of the Property from an apartment building into condominiums, gives Millyard the exclusive right to occupy those portions of the improvements to the Property where the "pay-per-use laundry equipment" are located (hereinafter, the "Laundry Rooms");
- (4) the Taxpayer cannot be taxed because the Laundry Rooms became part of the condominium common area by reason of the Declaration for the condominiums recorded on June 28, 2005;
- (5) the Declaration refers to the Lease and, at the time the 71 condominium units were sold, each was conveyed "subject to" the Lease;
- (6) the seven onsite Laundry Rooms are an amenity of unit ownership and each owner/resident is benefited by the convenient location of the laundry facilities within the building, instead of having to travel off site to wash and dry their clothes;

(7) consequently, to the extent the Laundry Rooms have taxable value, their value is reflected in the condominium units which the Town has assessed separately; and

(8) notwithstanding the conditional stipulation regarding value, the assessments against the Taxpayer should be abated in their entirety.

The Town argued the assessments (at the lower value now stipulated to by the parties) were proper because:

(1) the Taxpayer, under the Lease, retained the exclusive right to operate and profit from the Laundry Rooms located on the Property (both directly and through its affiliated company, Millyard, the named Lessee);

(2) the term of the Lease is twenty (20) years, with two additional renewal periods of twenty (20) years each, and these related parties (the Taxpayer and Millyard) therefore control the operation of the Lease and occupancy and use of the Laundry Rooms for a very long period of time;

(3) each condominium unit owner is not being assessed for the rights reserved by the Taxpayer in and to the Laundry Rooms through the Lease and the Taxpayer has never surrendered or relinquished these rights;

(4) under RSA 73:10, property is taxable “to the person claiming the same” and title is not the test of taxability;

(5) because the Taxpayer is the actual owner and claims rights over important ‘sticks in the bundle of rights,’ including the right to use certain real property (the Laundry Rooms), receive income from that property and exclude others from it (see the Town of Pembroke’s Memorandum of Law, “Memorandum,” p. 4), those property rights can be separately assessed by the Town and no “double taxation” has occurred (id., p. 1); and

(6) in effect, the Taxpayer “is the owner of the equivalent of an easement over the [L]aundry [R]ooms” (*id.*, p. 6), and therefore is “the entity properly taxed for its rights in those rooms.”

Board’s Rulings

Upon review of the evidence and legal arguments presented, and for the reasons discussed below, the board finds the Taxpayer failed to meet its burden of proving the Town erred by assessing the Taxpayer for property rights retained with respect to the Laundry Rooms on the Property. Since the parties have stipulated to a lower assessed value, however, the valuation issue is no longer in dispute and therefore the appeals are partially granted and the assessments are abated to \$25,000 in each tax year.

In light of this stipulation, the only issue remaining in dispute is one of “who” is subject to assessment for the property rights at issue, rather than “how much” the assessments should be, a more common question in tax abatement appeals. The parties agree there are a total of seven Laundry Rooms situated within a 71-unit condominium development known as the Emerson Mills Condominiums, that the Laundry Rooms constitute real property subject to tax assessment and that \$25,000 is the proper assessment of those rights in tax years 2007 and 2008, if the Taxpayer is the proper party to be assessed.

Consequently, the mixed question of fact and law at hand is whether the Taxpayer can be assessed for the Laundry Rooms (or whether, instead, the Town should have assessed the individual condominium unit owners or the association for their value). Deciding this question requires analysis of the Lease, the Declaration and conveyancing documents.

The Lease is, to say the least, a somewhat unusual instrument and was not the product of an arm’s-length negotiation. It was entered into between related parties (the Taxpayer and Millyard) in April, 2005 just before, and clearly in anticipation of, the Taxpayer’s conversion of

the Emerson Mills Apartments into Emerson Mills Condominiums shortly thereafter. This anticipated development is expressly stated in paragraph 1 of the Lease, which then defines the “Leased Premises” as follows:

Lessor hereby leases to Lessee those portions of the improvements to the Premises [defined as the Property located at “100 Maine (sic) Street”], which currently contain the pay-per-use laundry equipment (the “Leased Premises”).

While the syntax of this sentence might be somewhat vague, the board concludes what is being leased is realty (the “portions” of the building “improvements” where the laundry equipment is located) and not personalty (the laundry equipment itself). Other evidence also supports this conclusion and a finding that the “Leased Premises” are legal interests in realty (building improvements) rather than personalty. A “Notice of Lease” was recorded with the Registry of Deeds at Book 2792, Page 410 (see Town’s Memorandum of Law, Exhibit E, p. 2), further corroborating the fact that the Lease concerns realty, not personalty. See RSA 477:7 and 477:7-a (notice of “real estate... lease for more than 7 years from the making thereof” can be recorded).

Consistent with this conclusion, paragraph 3 of the Lease anticipates the imposition of real estate taxes on Millyard’s “use and possession” of the Laundry Rooms and therefore specifically provides that it is Lessee’s (Millyard’s) responsibility to reimburse the Lessor (the Taxpayer) for “real estate taxes payable... in connection with the use and possession of the Leased Premises and operation of the Equipment.” Paragraph 3 further states it is the Taxpayer’s (Lessor’s) responsibility to provide utilities and the Taxpayer’s attorney confirmed at the hearing the utilities for the Laundry Rooms remain its responsibility. (He also acknowledged the utilities are separately metered from the rest of the Property and the utility bills for the Laundry Rooms are paid by the Taxpayer, not the condominium association or unit owners.) These covenants

further support the conclusion the Laundry Rooms are real estate subject to taxation under RSA ch.72.¹

At the hearing, the Taxpayer's attorney implied the compensation derived by the Lessor from the Lease is only "nominal" in amount, emphasizing the "One Dollar" (along with "other good and valuable consideration") referenced in the recital paragraph of the Lease, but provided no actual evidence, in the form of financial information or otherwise, regarding the actual rental income generated from the Laundry Rooms. The board finds the ongoing rental income accruing to the Taxpayer under the Lease is likely to be more substantial. Paragraph 3 spells out the "Rent" the Taxpayer receives is based on the total "income received" by Millyard from the laundry equipment, less certain expenses, but guaranteeing to Millyard only certain "minimum compensation" (the "price" of one washing cycle per installed washer and one drying cycle per installed dryer for each calendar day). This income flows entirely from the Taxpayer's realty interest in the Laundry Rooms, not the personalty, since there was no evidence that the Taxpayer has any ownership interest in the laundry equipment itself, which is presumably owned (or leased from others) by Millyard, not the Taxpayer.

The Lease provides, in paragraph 6, that it is:

binding upon and inure[s] to the benefit of the heirs, successors and assigns of the parties hereto, including, but not limited to, a successor as a result of the sale or conversion of the Premises to any other owner or form of ownership of all or part of the Premises. Lessor also represents that in the event the Premises is sold or transferred it shall be a condition of any such sale or transfer that the prospective purchaser or transferee take an express assignment of the Lease and be bound by all of its terms and conditions. Failure of the Lessor to secure an assignment of the Lease by a prospective purchaser or transferee shall, at Lessee's option, constitute a breach of this Lease and shall not serve to relieve Lessor or the purchaser or transferee of any obligations under the Lease which shall continue for the remainder of the Term [twenty (20) years].

¹ See, in particular, RSA 72:6 ("All real estate, whether improved or unimproved, shall be taxed except as otherwise provided"; and RSA 21:21 (the term "real estate" includes "all rights" and "interests" in land).

There is no evidence of any “express assignment of the Lease” or, correspondingly, that the Lessee (Millyard) has claimed a “breach” occurred as a result of the failure to provide a formal assignment. The Lease gives Millyard the “exclusive right,” not only to the existing Laundry Rooms, but to “any additional laundry space” on the Premises for a period of twenty (20) years, with two additional twenty (20) year renewal periods. (See Lease, paragraphs 1, 2 and 10.)

These provisions of the Lease expose logical flaws in the Taxpayer’s position. On the one hand, the Taxpayer has not relinquished the economic benefits of its real estate interests secured by the Lease, including the income stream generated for itself and Millyard, its related company, as well as the exclusive (monopoly) right granted to Millyard to conduct its laundry business in the Laundry Rooms for a very long time (since these parties ostensibly control whether the Lease will be renewed after the initial twenty (20) year term for two successive twenty (20) year terms). On the other hand, the Taxpayer’s arguments against tax assessment are premised on the idea that the Laundry Rooms are now part of the common area of the Property, each condominium unit owner has an undivided fractional ($1/71^{\text{st}}$) in the common area and they should be assessed for the ‘benefit’ derived for any ‘amenity’ value stemming from unit ownership.

The board does not agree with the Taxpayer’s arguments against assessment for several reasons. These reasons are discussed below in the context of the Declaration and the conveyancing documents (the deeds to each condominium unit sold by the Taxpayer).

First, there is no evidence the Taxpayer gave up the important economic rights to possess and control the Laundry Rooms for the use of Millyard, its Lessee, when it converted the Property into condominiums and the condominium documents are less than clear in definitively establishing the Laundry Rooms are part of the common area collectively ‘owned’ by the

individual unit owners for their exclusive benefit. Unlike the parking spaces, which are clearly stated to be part of the common area (“deemed to be Common Area,” in paragraph B.1 of the Declaration, at p. 2) and are not subject to a lease, an easement or other third party interest, the Declaration (in paragraph B.2, p. 2) is less definite: this paragraph refers to the “Site Plan” showing the “Laundry Room [singular]” as being in “the Common Area in the building” and incorrectly states the “Declarant” is the “assignee” of the Lease “held by its predecessor in title” and that the Lessee is “responsible for utilities.” (In fact, the Declarant is identified as the Taxpayer, is the Lessor under the Lease, not the “assignee,” and is responsible for the utilities.) Paragraph 11.9 of the Declaration is titled “Right to Access Common Area” and references the “long-term commercial” Lease and clarifies the “pay-per-use laundry equipment” was installed and is operated and maintained by the Lessee (Millyard); this paragraph goes on to state the equipment is in “those portions of the Common Area of the Condominium described as Laundry Room on the Floor Plans.” Taxpayer Exhibit No. 3. (See also paragraph 8.5 (“Common Area Defined”) which does not specifically mention the Laundry Rooms as part of the common area, except by alluding to “All Other Areas” not including the units themselves.)

Second, each deed delivered to the unit owners simply states the conveyance is “subject to” the Lease. (See the sample “Condominium Warranty Deed” attached as Exhibit E to the Town’s Memorandum.) As noted above, there has been no express assignment of the Lease by the Taxpayer. It is far from clear, on the record presented, whether the Taxpayer has relinquished any of its rights to the Laundry Rooms under the Lease to anyone, including the condominium unit owners, or that the Taxpayer intends to do so at any time while the Lease remains in effect, which could be as long as sixty (60) years. It is also notable that the wording of the deeds from the Taxpayer to each purchaser of a condominium unit state that the

conveyance includes “Easements in common with others to use the Common Area. (Emphasis added)” (Id.) This wording conveying a collective use easement provides further support for the conclusion that the unit owners do not have the full bundle of property rights associated with the Laundry Rooms (to the extent the Laundry Rooms are part of the common area). As the Town noted, while ownership of the common area may include the “shell” of the Laundry Rooms, the unit owners have no control over the actual commercial use of the Laundry Rooms by the Taxpayer and Millyard because the terms of the Lease give these important property rights exclusively to the Taxpayer and Millyard, not the unit owners. In other words, the right each condominium unit owner has to the Laundry Rooms is simply the right to access and use the facilities (on a “pay-per-use” basis for the laundry equipment). As the Town emphasized, the right to operate the Laundry Rooms, collect its revenue and exclude all others from operating commercial laundry equipment on the Property are retained by the Taxpayer through its lease with Millyard. (See Town’s Memorandum, pp. 4-5.) When municipalities value property rights encumbered by a lease, they customarily assess them as if the rights had been reassembled. Thus, it was proper for the Town to assess the Taxpayer for the rights defined under the Lease with Millyard.

Third, the Taxpayer’s reliance on RSA 356-B:36, II of the Condominium Act as part of its argument against assessment is unavailing. Several conditions necessary for the application of this provision are missing: (1) the Lease was entered before, not “during,” the “period of control” by the Declarant (the Taxpayer who created the condominiums); and (2) there is no evidence the Lease was ever “renewed or ratified with the consent of the unit owners” or “a majority of the votes” in the association. There is therefore reason to question whether the Lease is “binding” on the association or the unit owners by reason of this statute, as argued by the

Taxpayer's attorney. But even if the obligations of the Lease are "binding" on the unit owners or the association (by reason of this statute, the deeds or otherwise), such obligations on their part would not preclude assessment of the Taxpayer for the rights and benefits it retained under the Lease.

In summary, the board finds the Lease and Declaration are somewhat complicated and confusing documents with inconsistent provisions. The Taxpayer's attorney acknowledged at the hearing that in other condominium conversions his clients (the Brady-Sullivan 'family of companies') have undertaken, they have retained clear title and ownership of laundry rooms within the buildings and are assessed and taxed separately for those property rights by the municipality. (See Taxpayer's Requests for Findings and Rulings No. 6 below.) The board is unable to conclude a different result is mandated simply because the legal device of a long-term lease between related parties was chosen by the Taxpayer to retain control for a very long period of time (rather than deeded fee simple rights to the Laundry Rooms). Simply because each unit owner acquired property "subject to" the Lease does not mean that all the incidence of taxation should be shifted to them from the Taxpayer.² A more accurate interpretation of the "subject to" language (drafted by the Taxpayer) is that the Taxpayer intended to burden the unit owners with the Lease (subjecting them to its terms and conditions for an extended period of sixty (60) years) while itself retaining all of the economic benefits associated with the Laundry Rooms.

² Compare, in this respect, the fact pattern in Alexander v. Blackstone Realty Associates, 141 N.H. 366, 368 (1996), where a developer acquired land through a long-term ground lease with a landowner obligating the developer (as lessee) to pay the real estate taxes; the developer then converted the property into 288 condominiums, assigning to each owner in the warranty deeds a proportional (1/288th) interest in the ground lease and conveying each unit "subject to" the "terms and provisions" of the ground lease. On these different facts, the supreme court found the lease and condominium documents were not "ambiguous" in placing, on the individual unit owners, the obligation to pay "all real estate taxes, including those on the leased land" since they had succeeded fully and completely to the rights and obligations of the lessee/developer under the ground lease. As noted above, and in contrast, there is no evidence the Taxpayer in these appeals has assigned all of its rights as lessor under the Lease to the unit owners or that it intends to do so, either by amendment of the Lease, formal assignment of its rights or otherwise, or that the unit owners have in fact succeeded fully and completely to the rights of the Taxpayer under the Lease.

Looking at the issue from another perspective, the board agrees with the Town's argument that the Taxpayer has not given up all of the "sticks" in the "bundle" of property rights constituting the fee simple interest in the Property and the Taxpayer has not met its burden of proving the Town erred when it assessed the Taxpayer for those property rights it voluntarily chose to withhold and retain from the full bundle. (See the citations of authority in the Town's Memorandum at p. 4.³) A contrary conclusion would mean those rights would, in actuality, have escaped taxation for the years under appeal since the Town has not attempted to assess the Laundry Rooms against the unit owners or their association. This result is inequitable especially where the parties to the Lease (the Taxpayer and Millyard) acknowledged and agreed that the rights pertaining to the Laundry Rooms were subject to real estate taxation and Millyard agreed to reimburse the Taxpayer for payment of such taxes.

The established principle in New Hampshire that 'title is not the test of taxation,' embodied in RS 73:10, is also supportive of the Town's position. As the Town correctly points, the Taxpayer has failed "to show that it has parted with its rights and interests in the [L]aundry [R]ooms" even if, for other purposes, the Laundry Rooms are deemed to be part of the common area. (See Memorandum, p. 4, including the authorities cited.) The board understands the Taxpayer's position to be that it claims and controls (along with Millyard) the exclusive right to

³ Accord, NOC Realty v. Town of Kingston, BTLA Docket No. 23068-06PT (April 2, 2009) ("Because real estate rights are varied and can be segmented, each property is understood to have a 'bundle of rights' associated with it, much like a 'bundle of sticks,' with each stick representing a distinct or separate right or interest. See Appraisal Institute, The Appraisal of Real Estate (12th ed. 2001) at p. 8. Consequently, in valuing the bundle of rights associated with each property, all relevant factors must be considered. Paras v. Portsmouth, 115 N.H. 63, 67-78 (1975)."); see also, e.g., Atturio v. Town of Thornton, BTLA Docket Nos. 21276-04PT/22204-05PT (October 12, 2007) ("While they vary from property to property, these ownership rights are often viewed as a 'bundle of rights.' Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to exclude others, to give it away, or to choose to exercise all or none of these rights. 'The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest.' Appraisal Institute, The Appraisal of Real Estate, p. 7 (11th ed. 1996).").

occupy and use the Laundry Rooms, a control that extends to the point of providing for its own utilities and obligating Millyard to reimburse the Taxpayer for real estate taxes, but nonetheless should not be assessed and taxed for these rights in and to the Laundry Rooms. Because the retained stick in the bundle of rights, that of operation and control of the Laundry Rooms, arose from and was split off from the totality of property rights when owned in fee as Emerson Mills Apartments, it is a real property right (see RSA 72:6 and RSA 21:21, quoted in fn. 1) that must be assessed separate from the property rights of the condominium unit owners.

One of the case authorities cited by the Town is Bellows Falls Canal Co. v. Walpole, 76 N.H. 384, 386-87 (1912), where the supreme court ruled as follows:

It was therefore incumbent [on the taxpayers] to show, not only that they had parted with certain rights or interests in the property, but also that they were not in the possession and occupation of the property and did not consent to be taxed for it. . . .

In view of this situation and of the further fact the grantees [to certain rights and easements] agreed with the [taxpayers] to assume and pay all the taxes assessed upon the premises conveyed, in addition to the yearly rental that was reserved, . . . we are of the opinion that justice does not require that the taxes in question should be abated.
[Citations omitted.]

RSA 76:16-a, I authorizes the board to order an abatement “as justice requires.” The board finds abating the assessments entirely for the tax years under appeal would be unjust since it would allow the Lessee of those retained rights (Millyard), who has voluntarily agreed (under the terms of the Lease) to pay the real estate taxes associated with exclusive use of the Laundry Rooms, to escape taxation.

The board is aware the magnitude of the assessments is relatively nominal if the stipulated assessed value of the Laundry Rooms is divided among 71 condominium units ($\$25,000 / 71 = \352 , rounded, per unit) and that the total assessment of each unit is unlikely to change materially if the assessment for the Laundry Rooms is shifted to them. Nonetheless, the

principle is a sound one that, while Millyard's "pay-per-use" washing machines and dryers arguably offer more "convenience" to the unit owners than if this equipment did not exist at all (and residents had to go off site to do their laundry), the putative "amenity value" of this arrangement is less than what it would be if the Lease did not exist or was extinguished and the exclusive right to occupy and use the Laundry Rooms was vested entirely in the condominium association or the unit owners themselves. Such vesting of full ownership rights, a more typical occurrence in condominiums with common areas, would provide more substantial benefits and make it appropriate for the entire value of the Laundry Rooms to be assessed to the association or the unit owners.⁴ For example, if the condominium association or unit owners collectively controlled the Laundry Rooms (rather than the Taxpayer and Millyard), the benefits could include some combination of lower pay-per-use charges for the laundry equipment and/or reduced association fees because of the rental income generated from the Laundry Rooms (economic benefits which now accrue instead entirely to the Taxpayer and Millyard). On the record presented, there is no evidence these parties are providing laundry services to the unit owners and residents at or below actual cost (as an amenity) rather than for their own profit.

For all of these reasons, the board finds the Town did not err in assessing the Taxpayer for property rights pertaining to the Laundry Rooms. By stipulation of the parties, however, the assessment amount is abated to \$25,000 for each tax year under appeal.

If the taxes have been paid, the amount paid on the value in excess of \$25,000 for tax years 2007 and 2008 shall be refunded with interest at six percent per annum from date paid to

⁴ The Taxpayer has submitted several proposed factual findings that the Town's assessments increased substantially as a result of conversion of the building from apartments to condominiums. (See Addendum A, Request Nos. 3 and 7.) These proposed findings, however, are not probative on the issue of whether the Taxpayer can be assessed for its retained interest in the Laundry Rooms. They are also not evidence that "double taxation" has occurred. (Id., Request No. 9.)

refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessments for subsequent years. RSA 76:17-c, I and II. While the board is aware the parties have stipulated to the same assessed value for future years -- “until the next revaluation in 2014” (see Town’s Memorandum, p. 1) -- the board finds the effect of law, RSA 76:17-c, I and II and Tax 203.05, adequately control the 2007 and 2008 stipulated assessments in subsequent years.

The board has responded to the Taxpayer’s “Requests for Findings and Rulings” in Addendum 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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

ADDENDUM A

The “Requests” received from the Taxpayer are replicated below, in the form submitted and without any typographical corrections or other changes. The board’s responses are in bold face. With respect to the Requests, “neither granted nor denied” generally means one of the following:

- a. the Request contained multiple requests for which a consistent response could not be given;
- b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the Request was irrelevant; or
- e. the Request is specifically addressed in the Decision.

TAXPAYER’S REQUESTS FOR FINDINGS AND RULINGS

FINDINGS OF FACT

1. The question in this case is whether the laundry rooms represent fee simple interests in real estate subject to advalorem taxation.

Granted.

2. The Taxpayer purchased the property when it consisted of apartments.

Granted.

3. The assessed value of the property as apartments was \$2,275,300.

Neither granted nor denied.

4. The Taxpayer converted the property to the condominium form of ownership.

Granted.

5. The condominium instruments define the laundry rooms as common area, owned in common by all of the unit owners.

Neither granted nor denied.

6. The condominium instruments in this case differ from many early conversions in which laundry rooms and accessory rooms were deeded to third parties.

Granted.

7. Following conversion on May 11, 2005, the assessment increased from \$2,275,300 to in excess of \$6,000,000 based on the individual assessments of units.

Neither granted nor denied.

8. The assessments of the individual units include the common interests in the property, including the laundry rooms.

Neither granted nor denied.

9. Any effort to assess and tax the laundry rooms in addition to the units is tantamount to double taxation.

Denied.

10. The Taxpayer does not have a fee simple interest in the laundry rooms.

Denied.

11. The income derived from the laundry rooms is nominal and results from coins produced by washers and dryers.

Denied.

12. There is no dispute that the income derived from personal property is not taxable in the State of New Hampshire.

Granted (within the context of RSA ch. 72 property taxation).

13. If the property did not included common laundry facilities, the market value of the units and the collateral assessments would substantially diminish.

Neither granted nor denied.

RULINGS OF LAW

14. Find the value of the common laundry rooms are already included in the assessments of the units and further assessment is improper.

Denied.

15. The laundry rooms are not independent fee simple property interests subject to advalorem taxation.

Denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John G. Cronin, Esq., Cronin & Bisson, P.C., 722 Chestnut Street, Manchester, NH 03104, counsel for the Taxpayer; Chairman, Board of Selectmen, Town of Pembroke, 311 Pembroke Street, Pembroke, NH 03275; Laura A. Spector, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246, counsel for the Town; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: 2/24/10

Anne M. Stelmach, Clerk