

**Ackerson Trust**

**v.**

**Town of Thornton**

**Docket No.: 24786-09PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$153,800 on Map 17/Lot 15/Sub 4B03, 7 Laurel Circle No. 3, a residential condominium (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer’s trustee argued the assessment was excessive because:

(1) the Town did not use a sound methodology when it determined the assessment;

(2) in particular, the assessment does not reflect the “discount” from market value other nearby properties were given, making it disproportionate compared to the Property’s market value and the Town-wide level of assessment;

(3) the \$50,000 “features” value applied to the Property, in place of a “land” value, overstates the value of the Property’s proportionate share of the land area in the White Birches complex; and

(4) the correct total value and assessment for the condominium should be \$116,395 (as calculated in Taxpayer Exhibit No. 1).

The Town argued the assessment was proper because:

(1) the \$50,000 features value reflects the portion of the Property’s market value after the value of the condominium improvements are removed;

(2) the assessments of all condominiums in the Town were calculated using the same methodology, that is, estimating the value of the improvements and then using a “land residual technique” to determine the value of the features;

(3) in trying to estimate a proportionate assessment, the Taxpayer did not compare the Property to other condominiums but rather to single family properties making the analysis flawed; and

(4) there were three sales in the White Birches complex, where the Property is located, which support the assessment and no abatement is warranted.

The parties agreed the level of assessment in the Town for tax year 2009 was 99.1%, the median ratio calculated by the department of revenue administration.

### **Board’s Rulings**

Based on the evidence and testimony, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The appeal is therefore denied for the reasons discussed below.

The Taxpayer made two separate arguments for a tax abatement. First, it contended the assessment should be “discounted” to the same degree as seven other selected properties which sold and had lower assessments relative to their market values. Second, the Taxpayer disagreed with the Town’s methodology because it arguably attributes a higher value per acre to the land than comparable properties. The board finds neither of these arguments supports an abatement on the Property in tax year 2009.

The Taxpayer did not dispute the market value of the Property equaled or exceeded the assessed value (\$153,800), but contends the Property’s assessment should be adjusted to a percentage of market value similar to several nearby properties. The Taxpayer’s trustee conceded there were two sales of condominium units on Laurel Circle, in the Property’s condominium complex, with selling prices near their assessed values. He argued, however, there were seven other nearby properties which sold in 2007 and 2008 assessed at approximately 83.5% of their sale prices. When that percentage is applied to the Property, the resulting assessed value would be \$128,423. The board finds this reasoning is flawed for several reasons.

First, of the seven properties the Taxpayer used for comparison, six are not condominiums which share a common land area within an association but rather single family homes on their own separate lots. The seventh property (34 Liberty Lane, Unit 4) is a condominium in a different association with a \$56,200 features value applied to it. This unit, however, has 148 square feet (approximately 10%) less finished living area than the Property and the Town testified this unit was not the same quality as the Property, which the Taxpayer did not dispute.

Second, the fact there may be a neighborhood of properties which are assessed below (at 83.5%) the town-wide general level of assessment (99.1%) indicates some properties may be

underassessed. The recent economic downturn and its effect on the real estate market in general, may cause some difficulties in maintaining the accuracy of assessments. The board reminds the parties that assessments are an annual event. See RSA 75:8. The assessors and selectmen of each municipality are obligated on an annual basis to review all properties within their towns and to revise those assessments on an on-going basis which may need adjustments. The under-assessment of other properties, however, does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

Last, assessments must be based on market value. See RSA 75:1. The sale of the two condominiums in the Property's immediate neighborhood (7 Laurel Circle, Nos. 4 & 5) at approximately their assessed values is an indication the Property is proportionately assessed in line with the Town's 99.1% level of assessment for tax year 2009.

The Taxpayer asserts the Town lacked a sound methodology when it developed the Property's assessment in that the \$50,000 features value is overstated for the Property. The Property is in a 10-unit condominium complex on 11.45 acres of land. The Taxpayer therefore reasoned the Property's allocated land area should be 1/10<sup>th</sup> of that acreage (1.145 acres) and then compared the average land value calculated using the Taxpayer's \$50,000 features value and the 1.145 acres allocated land value of \$43,668 per acre ( $\$50,000 \div 1.145 \text{ ac.} = \$43,668 \text{ per acre}$ ) to the land values for four nearby properties which average \$22,200 per acre. As further support for its belief regarding the features value, the Taxpayer submitted an analysis (contained in Taxpayer Exhibit No. 1) using three abutting properties which are being developed. The average assessed value for these properties is approximately \$11,000 per acre. When the Taxpayer applied this average value to the Property's 1.145 acres, the resulting features/land value is \$12,595 not the \$50,000 assigned by the Town.

The board finds this analysis is also flawed because it is inappropriate to allocate any specific land area to a single condominium within a complex. Each condominium owner has the right to the enjoyment of the entire common area -- in this case, the entire 11.45 acres. In other words, the Taxpayer does not own, and is not being assessed for, a fee simple interest in only 1.145 acres of land, but rather has an undivided interest in the full 11.45 acres of land in the condominium development as a whole and should be assessed for the market value of the bundle of rights associated that interest, along with the building value of one unit.

The Town testified the features value is determined through a “land residual technique.” The land residual technique takes the selling price of a property and deducts the value of any improvements. The “residual” value for a condominium is considered to be the value of the features rather than any particular land area. The features in this case include all the water, sewer, roads, access, or other amenities that the individual units have rights to and are associated with them. All relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 6768 (1975).

The Town assessor testified this methodology is applied to all the condominiums in the Town, as well as to condominiums in other municipalities. This testimony is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The board finds, given its experience, this methodology is a reasonable method to fully capture all the value in condominium style properties.

In summary, the board finds the Town has reasonably calculated the Property’s assessment using a standard methodology for mass appraisal assessments and no abatement is warranted. The appeal is therefore denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Ackerson Trust, Deborah S. and Edmund E. Ackerson, Trustees, 19 Burnham Street, #B1, Belmont, MA 02478; Chairman, Board of Selectmen, Town of Thornton, 16 Merrill Access Road, Thornton, NH 03223; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: November 17, 2011

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Anne M. Stelmach, Clerk