

**RS49 Realty Trust**

**v.**

**Town of Campton**

**Docket No.: 24790-09PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$37,900 on Map 15/Lot 09-009-00001, 49 Red Sleigh Road, a residential condominium (the “Property”). For the reasons stated below, the appeal is granted, but only to the abated assessment amount of \$32,800 recommended by the Town.

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 board held a consolidated hearing on this appeal with BTLA Docket No. 24789-09PT. The Taxpayer’s trustee is the same for both properties, condominiums in the same complex located on the same street, and the arguments and evidence in each appeal are essentially the same. As agreed at the hearing, the board is issuing separate decisions for each property.

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

- (1) the Taxpayer purchased the Property in January, 2010 for \$10,002 and this reflects its market value;
- (2) although the seller (the Federal National Mortgage Association -- "FNMA") had acquired the Property through foreclosure (in November 2009), it was then marketed through a real estate agency (Century 21) for 111 days and the Taxpayer was the only person to make an offer (at \$10,002, \$2 above the listing price) and he closed the sale at this price 24 days later; and
- (3) this purchase price is market value and should be the basis for the assessment.

The Town argued at the hearing that a revised assessment abated to \$32,800 was proper because:

- (1) the purchase was an unqualified transaction under the department of revenue administration's ("DRA") guidelines;
- (2) the transaction was not arm's-length in nature because the seller (FNMA) had atypical motivations;
- (3) the revised assessment takes into account the condition and functional obsolescence of the Property and the declining market generally and in the Red Sleigh development; and
- (4) no further abatement is warranted.

The parties agreed the level of assessment in the Town was 100%, the median ratio calculated by the DRA.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment for tax year 2009 is the revised assessment of \$32,800 defended by the Town at the hearing. The appeal is therefore granted, but only to this amount, not the larger abatement sought by the Taxpayer.

The Taxpayer did not present an appraisal or any type of market analysis but instead based his appeal on the fact he purchased the Property in January, 2010 for \$10,002, \$2 more than the asking price. The Property was advertised for sale by Century 21 Country Lakes Realty and had been listed in the multiple listing service by the real estate agency for 111 days prior to the Taxpayer's offer. The Taxpayer contends this extended exposure to the open real estate market should be compelling evidence the purchase was an arm's-length transaction and the sale price a valid indication of the Property's market value. The board does not agree.

The Property is a three-bedroom, one-bath condominium with 774 square feet of effective first floor living area and is presently being rented and generating income. The Taxpayer's purchase of the Property occurred almost ten months after the assessment date (April 1, 2009) during a period of extreme turbulence in the real estate and financial markets, as reflected in foreclosure sales. The board finds the sale of the Property was not an arm's-length transaction. The seller, FNMA or "Fannie Mae," obtained the Property through foreclosure. Fannie Mae "is a quasi-governmental agency (i.e., supported by the government but acting independently) that purchases mortgages from banks, trust companies, mortgage companies, savings and loan associations, and insurance companies to help distribute funds for home mortgages."<sup>1</sup>

Fannie Mae, Freddie Mac (Federal Home Loan Mortgage Corporation) and Ginnie Mae (Government National Mortgage Association) are the principal operators in the secondary mortgage market. This market was created by the government and private agencies for the purchase and sale of existing mortgages, which provides greater liquidity for mortgagees (lending institutions).<sup>2</sup> Typically, Fannie Mae does not buy real estate because of a desire to own, manage and profit from it but is sometimes compelled to do so only after one of the

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<sup>1</sup> Appraisal Institute, The Appraisal of Real Estate, 104-105 13<sup>th</sup> ed. (2008).

<sup>2</sup> Id.

mortgages it holds is in severe default and a foreclosure or other collection action is necessary.

Thus, in the absence of persuasive evidence to the contrary, the board finds Fannie Mae was atypically motivated as a seller of the Property (acquired through foreclosure) and therefore the Taxpayer's purchase price is not a reliable indicator of market value.

The board recently addressed the problems inherent in relying on distressed sales to establish market value. In Gagnon Revocable Living Trust v. Town of Allenstown, BTLA Docket No. 24511-08PT (January 19, 2011), the board gave no weight to the purchase price paid by the taxpayer to a financial institution for a property (as well as the prices of other distressed, unqualified sales also relied upon and contained in an appraisal) "because the seller, as a financial institution, had atypical motivations": as the board noted, when such sales are shown to be below market value and are disqualified by the DRA, "those sales should not be the basis for estimating the market value/assessed value for proportional taxation. See, e.g., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994)." Similar considerations persuade the board that the purchase price paid by the Taxpayer is not a reliable indicator of market value.

Further, the Town submitted a list of six qualified sales of properties on Red Sleigh Road (Municipality Exhibit C) which occurred between 2006 and 2011. The sales do indicate a declining market in this neighborhood which the Town recognized during the 2009 revaluation by making assessments significantly lower than the earlier purchase prices of those properties, but the sales do not support a market value as low as the value claimed by the Taxpayer.

After the appeal was filed, the Town stated it reviewed the Property, made an exterior inspection and revised the original assessment to the abated amount of \$32,800 by making various adjustments on the assessment-record card, specifically based on the condition and

functional obsolescence factors, to more accurately describe the Property. (See the 2010 assessment-record card included in Municipality Exhibit B.)

The board finds the Town's explanations of its specific adjustments and general methodology reasonably account for the generally declining condominium market and in particular the market for condominiums in the Red Sleigh Road neighborhood. The board finds the Town's abated assessment for the Property is reasonable based on the information available from qualified sales in the neighborhood and it was not error for the Town to give no weight to the purchase price paid by the Taxpayer based upon the Town's analysis of the market.

The Town followed a consistent methodology in adjusting all the assessments in this condominium development in the 2009 revaluation, not just the condominium units that sold. A consistent methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

For all these reasons, the board finds the Taxpayer is entitled to an abatement, but only to the Town's revised assessment of \$32,800. The appeal is therefore granted, but only to this limited extent.

If the taxes have been paid, the amount paid on the value in excess of \$32,800 shall be refunded with interest at six percent per annum from date paid to 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 assessment for subsequent years. RSA 76:17-c, I and II.

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: Norm Hebert, Trustee, RS43 Realty Trust, 22 Hickory Drive, Amherst, NH 03031, Taxpayer; Chairman, Board of Selectmen, Town of Campton, 1307 NH Route 175, Campton, NH 03223; and Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: 11/1/11

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Anne M. Stelmach, Clerk