

Albert Toth and Judith Toth

v.

Town of Pembroke

Docket No. 5891-89

James B. Schadlick and Janet W. Schadlick

v.

Town of Pembroke

Docket No. 5871-89

DECISION

These appeals were consolidated for hearing.

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessments of: Toth: \$105,150 (land, \$50,000; building, \$55,150; Schadlick: \$104,600 (land, \$50,000; buildings, \$54,600) The Taxpayers' real estate consists of Units 3 (w) and 2 (w) respectively, at Littlefield condominiums. (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

We find the Taxpayers carried this burden and proved they were disproportionally taxed.

The Taxpayers argued:

- (1) they purchased the units in 1986 for \$76,900 (Toth) and \$72,900 (Schadlick):
- (2) the \$30,000 increase from purchase date to date of assessment is

excessive;

- (3) metal fireplace is excessively assessed for \$3,250;
- (4) the land value is similar to single family lot values while the utility of

Toth/Schadlick v. Pembroke

Page 2

common land and private lots are quite different.

- (5) the town incorrectly assessed appliances not built in (valued at approximately \$2,000) as real estate.

The Town argues the assessments were proper because:

- (1) they were based upon many actual sales of similar units in Littlefield condominiums;
- (2) while the site value was similar to that of single family homes, the total value of the land and building components was derived directly from the market;
- (3) adjustments for such additions to the base unit such as the metal fireplace, were determined from the market and from the realtor marketing the project;
- (4) the value of the appliances were consistently not subtracted from the sale of the units.

Based on the evidence we find the correct assessment should be: Toth \$103,150 (land, \$50,000 and building \$53,150: Schadlick \$102,600 (land, \$50,000 and buildings \$52,600). These assessments are ordered because:

- (1) while the board understands the taxpayers' argument as to the relative utility of condominium sites versus single family house lots, the taxpayers failed to prove that the total value of land and buildings was disproportionate.
- (2) the Town showed by their ratios and coefficients of dispersion of Littlefield condominiums that the units were proportionately assessed;
- (3) the taxpayers failed to prove that the metal fireplace did not contribute the \$3,250 in value;
- (4) the Town, however, was incorrect in not subtracting the appliances as personal property from the initial sales; this results in the units being overassessed by approximately \$2,000. (See Winnipiseogee etc. Co. v. Laconia, 74 N.H. 82, 83-84 (1906), a taxpayer is entitled to an abatement if they can show they were assessed property that was not properly

taxable.).

If the taxes have been paid, the amount paid on the value in excess of \$103,150 (Toth) and \$102,600 (Schadlick) shall be refunded with interest at six

Toth/Schadlick v. Pembroke

Page 3

percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Albert and Judith Toth, James B. and Janet W. Schadlick, Taxpayers and Chairman, Selectmen of Pembroke.

Valerie B. Lanigan, Clerk

Date:

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