

Joseph P. & Bette A. O'Reilly

v.

Town of Bethlehem

Docket No.: 10148-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$129,450 (land, \$45,250; buildings, \$84,200) on a townhouse located at the Village at Maplewood (the Property). The Municipality failed to appear, but consistent with our Rule, TAX 202.06(h), the Municipality was not defaulted. This decision is based on the evidence presented to the board.

For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) the 3-bedroom unit on slab townhome, specifically Unit #77 in the Village of Maplewood, was purchased in July, 1989 for \$139,900;

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(2) in June, 1980, First New Hampshire Bank (FNH) foreclosed on the project with the remaining 5 townhomes, undeveloped land and management of the association;

(3) FNH hired the Finch Group to market the 5 unsold units; Unit #41 (a 3-bedroom unit with apartment in the basement) sold for \$120,000 in July, 1990 and Unit #44 (a 3-bedroom with full unfinished basement) sold for \$110,000 in October, 1990; and

(4) the fair market value of the Property was between \$90,000 and \$95,000 on April 1, 1990.

The Town did not appear at the hearing but submitted a rebuttal brief and argued the assessment was proper because:

(1) the sales referenced by the Taxpayer were not arms-length sales because they were sold by a company contracted to liquidate bank property; and

(2) the assessment is consistent with others within the Town.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the assessment was disproportional.

The board finds the department of revenue administration's equalization ratio for 1991 of 123% to be the best indication of the general level of assessment within the community. Based on that ratio, the indicated market value of the Property is \$105,244 ($\$129,450 \div 1.23$).

The Taxpayers argued their Property was overassessed relative to two 1990 sales of units with full basements that sold for \$110,000 and \$120,000.

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The board does not find the Taxpayers arguments convincing for two reasons:

(1) the Taxpayers' indicated market value of approximately \$105,000 for a unit without a basement is proportional to two sales that occurred with basements; the differential of \$5,000 to \$15,000 for the basement is reasonable based on the replacement cost for a full basement with and without finish and the reduced utility of the slab unit; the \$20,000 difference in sale price the Taxpayers indicated was the market difference may have been appropriate when these units were first marketed; however, in the reduced market of 1990, the value differential relative to the basement would also be reduced; and

(2) the board finds the Town's assessment methodology to be consistent amongst condominium units; consistent methodology is some evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982); for example, the two sale properties presented by the Taxpayers have equalized assessed values within \$2,000 or \$3,000 of their 1990 sales price (unit 41 assessed value $\$144,000 \div 1.23 = \$117,073$ sold July 1990 for \$120,000; unit 44 assessed value $\$133,000 \div 1.23 = \$108,130$ sold October 1990 for \$110,000).

The Taxpayers in their appeal application stated an additional reason for abatement was that they do not receive certain Town services. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

A motion for rehearing, reconsideration or clarification (collectively "rehearing

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motion") of this decision must be filed within twenty (20) 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph P. & Bette A. O'Reilly, Taxpayers; and Chairman, Selectmen of Bethlehem.

Dated: May 4, 1994

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Valerie B. Lanigan, Clerk