

Scott W. Malcolm

v.

Town of Wolfeboro

Docket Nos.: 10758-90 and 12436-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 revised assessments of \$224,600 on a condominium unit in Mountain West Condominiums (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessments were excessive because:

1) the Property was purchased at foreclosure auction on June 15, 1990, for \$171,000 with ten registered bidders, and the sale price was the best price a buyer would pay for the Property;

- 2) units have not sold for the assessed values and prices paid at foreclosure auction should be considered valid by the Town because these prices represent a significant portion of the market;
- 3) the Town excluded comparable sales in setting the benchmark values for the revaluation, and some of the sales used were over nine months old;
- 4) the assessment should be \$195,000;
- 5) the average sale price at Mountain West Condominiums was \$200,414; and
- 6) the Town only assumed the Taxpayer's comparable sales, other than the foreclosure sales, were distressed sales.

The Town argued the assessments were proper because:

- 1) seven of the Taxpayer's nine comparable sales are distress sales that occurred after the revaluation, and the Taxpayer failed to make adjustments for differences in size, location, etc.;
- 2) the same methodology was used throughout the Town;
- 3) the condominium's amenities include tennis courts, recreation buildings, beach area, and lighted docking area with individual boat slips;
- 4) the Property is a first-tier, end-unit condominium with an unobstructed view of the lake; and
- 5) arm's length condominiums sales have sold within range of the assessed values.

#### Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property's assessments were disproportionate for the following reasons:

- 1) the Taxpayer did not make any adjustments for differences between units such as size or location of the unit in the complex;

2) the Taxpayer made no adjustments to sales that were distressed, bank, or foreclosure sales. The sales made by an owner to satisfy delinquent loans are not "arms length" due to the pressure of the owner to sell, consequently, while these accelerated sales will affect the market value of those who choose not to sell, they alone do not define the market;

3) the Town introduced sufficient sales that indicated consistent assessment methodology. Consistent analysis and methodology is some evidence of proportionality; see Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982); and

4) the Town's 1992 sale supports its position that condominium market value transactions were still occurring at substantially higher values than the distress sales.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Scott W. Malcolm, Taxpayer; and Chairman, Selectmen of Wolfeboro.

Dated: July 21, 1993

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Lynn M. Wheeler, Deputy Clerk

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