

David and Cheryl Favreau

v.

Town of Whitefield

Docket No.: 8530-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$24,150 (land, \$12,500; building, \$11,650) consisting of a cottage conversion condominium (the Property). The Taxpayers 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 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(3); 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 the assessment was excessive because:

1) they are unfairly taxed on the land as there are ten other properties on this land, and their share is only one-tenth;

- 2) comparables submitted show a large disparity between comparable house sites, (i.e., acreage of land, number of feet on the lake and road, and current assessments);
- 3) there appears to be an imbalance in deductions and additions to the cabin's value; and
- 4) the cabin has no foundation, no insulation, and the plumbing lines and water systems are above ground and is only seasonable, opening Memorial Day weekend and closing on Columbus Day.

The Town argued the assessment was proper because:

- 1) Whitefield Lakeside Condominium is a cottage conversion condominium with by-laws restricting all units to seasonal occupancy, and Taxpayers' purchased the Property knowing this;
- 3) all of the Whitefield Lakeside Condominiums were assessed in the same manner as "other towns with cottage conversion condominiums";
- 4) the unit under appeal was sold to the broker's son for \$14,500 and should not be considered an arms length transaction;
- 5) after remodeling the Taxpayers purchased the Property for \$32,500;
- 6) the building appraisal was derived at by using the Department of Revenue Administration's manual which was used throughout the Town, and Taxpayers' cottage was the nicest cottage in the development;
- 7) Taxpayer's comparables failed to prove they were disproportionate in comparison to other assessments -- Taxpayers' comparables "were not legally divisible into multiple ownerships."

The board finds the proper assessment should be \$17,500. The board notes that in making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings) together because this is how the market views value. However, the existing assessment process allocates

the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices. We note that in making a judgment of the proper assessment, the value of the entire property, i.e., land and building, must be established.

The assessment to sales ratios of 54% of units 1, 8, and 10 that sold in 1988 and 1989 indicates that the units were overassessed as the Town-wide ratios for those years were 39% and 34%.

While the Taxpayers were aware of the seasonal use of the Property when they purchased it, no functional depreciation was given to the assessment of the camp by the Town to recognize its seasonal utilities. The board also notes the grading of the cottage has a C3 which is the highest quality cottage in the appraisal manual. Photographs submitted by the Taxpayers indicates it is something less than a C3.

If the taxes have been paid, the amount paid on the value in excess of \$17,500 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul F. Franklin, Member

Michele E. LeBrun, Member

I certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to David and Cheryl Favreau, Taxpayers and Chairman, Selectmen of Whitefield.

Dated: October 31, 1991

Melanie J. Ekstrom, Deputy Clerk