

Florindo F. and Judith I. Dal Pan

v.

Town of Gilford

Docket No.: 9012-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 revised assessment of \$108,750 (land \$20,250; buildings \$88,500) on Unit 43 in the Country Village Way Condominiums (the Property). 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to prove the assessment was disproportional.

The Taxpayers argued the assessment was excessive because:

- (1) a topography depreciation should have been applied because there are steep areas on both sides of the unit;
- (2) a topography adjustment was applied to a comparable home, Hall;
- (3) there are variations in the square footage;

(4) the amenities value is too high, the swimming pool has never had a certificate of occupancy; and

(5) the fair market value of the Property is approximately \$95,000.

The Town argued the assessment was proper because:

(1) the Department of Revenue Administration (DRA) performed a revaluation in 1986;

(2) for the 1990 tax year, the Town made 25% adjustments for all non-waterfront condominiums and 20% adjustments for waterfront condominiums;

(3) the amenities value is a technique used in valuing undefined tangible and intangible items received as a result of ownership within the condominium complex such as tennis courts, rights of passage over common areas, etc.;

(4) an adjustment for the lack of a swimming pool was applied - an unfinished factor of .90;

(5) the complex is built on a hill and the topography is generally rolling to steep - the Hall comparable is located in Gunstock Acres and a topography factor is required to reflect the market; and

(6) a comparable property, Unit #21, with roughly the same topography, sold in March, 1990 for \$135,000 and when equalized, supports the assessment of the Property.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's revised assessment. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128

N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Taxpayers asserted the Town overassessed the "amenities" associated with this condominium unit. Specifically, the Taxpayers argued the condominium complex lacked amenities (i.e. no certificate of occupancy for the swimming pool). Answering the Taxpayers' assertion requires explaining the "amenity" assessment. The "amenity" assessment is calculated by determining the replacement cost of the unit and subtracting the cost from sales prices. The remaining value is called the "amenity" value. This "amenity" value captures all tangible and intangible features of the unit and of the complex, including locus or situs desirability and marketability, common land, improvements such as roads, landscaping, lighting, parking, utilities, site work and if present, recreational facilities. The Town asserted that a reduction to the amenities value was applied for the lack of a swimming pool.

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). The Town submitted evidence of a March, 1990 comparable unit which, when equalized, supports the Property's revised assessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Florindo F. and Judith I. Dal Pan, Taxpayers; and Chairman, Selectmen of Gilford.

Dated:

0008

Valerie B. Lanigan, Clerk

Florindo and Judith I. Dal Pan

v.

Town of Gilford

Docket No.: 9012-90 (parcel #43)

ORDER

The Taxpayers in the above captioned appeal have filed a motion for rehearing/reconsideration postmarked August 26, 1993. The Town responded by letter dated September 3, 1993.

The original assessment for the subject property was \$145,000. This was abated by the Town to \$124,700 and finally abated again by the Town to \$108,750 for tax year 1990, according to Wil Corcoran, town assessor. Therefore the assessment under appeal before the Board of Tax and Land Appeals ("board") for the tax year 1990 was \$108,750. The board determined, based on the evidence, that the Taxpayers failed to prove the revised 1990 assessment of \$108,750 was disproportionately assessed.

The Taxpayers' motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. Further, the Taxpayers are not proposing to submit information which existed but was unavailable at the time of hearing. See RSA 541:3.

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Motion for rehearing/reconsideration denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS.

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Florindo F. and Judith I. Dal Pan, Taxpayers; and the Chairman, Selectmen of Gilford.

Dated: October 21, 1993

0008

Valerie B. Lanigan, Clerk