

George E. Fahey

v.

Town of Tilton

Docket No.: 9913-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$94,400 (building \$24,400; amenities \$70,000) on a condominium unit in Winnisquam Resort Condominium (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 abatement is denied.

The Taxpayer has the burden of showing the assessment was 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 assessment was excessive because:

1) the unit is only 14 x 24 feet and has only one bedroom, and the unit cannot be expanded because it does not meet the Town's square-footage requirements and would be an expansion of a nonconforming use;

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- 2) the Property has been listed for sale for \$83,000 since 1988 and no offers to purchase have been made;
- 3) the Property has only a 5.01% interest in the common land and unit 10 has a 10% interest, yet unit 10's assessment decreased by \$54,600 and the Property's assessment increased by \$10,700;
- 4) the common land value should not be equally divided between all 17 unit owners because each unit owner does not hold the same interest;
- 5) the condominium declaration states the Property's 5.01% interest in the common land is valued at \$25,000;
- 6) much larger units have lower amenity assessments, and all the two-bedroom units decreased in value while the one-bedroom units increased in value;
- 7) the amenities do not include the boat docks and swimming docks, but rather is only the common land as stated in the deed;
- 8) the Lakes Edge Condominium units have 115 feet more water frontage and only .13 acres less common land than the Winnisquam Resort Condominium units, yet Winnisquam has a \$25,000 higher amenity assessment per-unit than Lakes Edge; and
- 9) the Town's two sales are not comparable because one is a one-bedroom unit with 348 square feet living space, and the other is a two-bedroom unit with 575 square feet of living space.

The Town argued the assessment was proper because:

- 1) the Property is in above-average condition, has excellent lake access and only partly obstructed views, and the amenities include common land, boat docks and swimming docks;

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2) a comparable unit with a 5.01% interest in the common land sold in October, 1988 for \$78,000, and another comparable unit with a 6.02% interest in the common land sold in January, 1990 for \$109,000;

3) the common land interest is used to determine the association fees and is based on the unit's square footage, but in assessed values, the common interest is included in the building value and sales indicate that the common land interest is not reflected in market values; and

4) the amenity value is the difference between the unit's sale price and the building's assessed value.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the assessment was disproportionate. The board finds the Town adequately supported the assessment.

The Town submitted two sales of units at Winnisquam Resort Condominium which, while for different sized units, generally support the assessment. The Town also stated that the Lakes Edge Condominium had a lesser amenity value because it was a motel converted to condominium form of ownership and that sales indicated it was less desirable, warranting a lower amenity value.

The Taxpayer asserted the Town overassessed the "amenities" associated with this condominium unit. Specifically, the Taxpayer argued the condominium complex had limited amenities. Answering the Taxpayer's 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.

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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, and improvements such as roads, landscaping, lighting, parking, utilities, site work and if present, recreational facilities.

Lastly, the basis for determining a taxpayers proper share of the tax burden is by estimating the market value of their property (RSA 75:1). If a condominium's percentage interest in the common area is recognized by the market, then it would be a factor in determining the proper assessment.

However, no evidence was submitted in this case that draws a direct correlation between percentage of interest and the market value of the "land."

Generally, it has been the board's experience that in the marketing of condominiums, if all the amenities and access to the common areas (e.g., view, proximity to common services, and facilities, etc.) are similar, there will be little variation between the sales of the units that is not adequately accounted for by the differing building sizes and costs. In fact, sometimes, if the market is sensitive enough, there will be a slightly less "land value" recognized with the larger units than with the smaller units for two reasons: (1) if the percentage interest of the common area is based upon relative size of the unit and is used as a basis for allocating condominium fees, the higher annual fees to be assumed by a prospective buyer of a larger unit will be a slight deterrent; and (2) developers of condominium projects attempting to market different sized units in a certain price range, will frequently

allocate slightly more of the site's hard and soft costs (i.e., all nonbuilding costs) to the smaller units and vice versa so as to keep all the units within a certain marketable price range.

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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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to George E. Fahey, Taxpayer; and Chairman, Selectmen of Tilton.

Dated:

Melanie J. Ekstrom, Deputy Clerk

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