

Virginia C. Beecher

v.

Town of Hopkinton

Docket No.: 10926-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$139,050 (land, \$35,000; building, \$104,050) on a residential condominium (the Property). 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- 1) the Property was purchased, at an absolute auction, in June 1990 for \$98,000 with substantial furnishings;
- 2) the Town was revalued but no comparable sales had occurred since June 1990 in the Town;
- 3) comparable units at the absolute auction sold between \$92,000 and \$94,076;

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- 4) land for future expansion at this condominium development sold for \$12,200 per unit;
- 5) two auctioneers and real estate brokers stated condominiums were a dime a dozen and \$90,000 would be enough to pay;
- 6) the Town's comparable (O'Boyle) was purchased for \$98,000 and sold for \$152,500 (two years later); however, it was a superior unit with many upgrades and a two-car garage;
- 7) an appraiser estimated an October 1992 fair market value of \$113,000; and
- 8) the Property was worth \$98,000 on April 1, 1991.

The Town argued the assessment was proper because:

- 1) during the revaluation, the Town did not consider auction sales, foreclosure sales or bank sales to be arms-length transactions;
- 2) the Taxpayer's purchase price was due to the developer being distressed and a motivated seller;
- 3) subsequent sales substantiated the assessments in this development (The Town even asserted there was some indication of underassessment.); and
- 4) the Taxpayer's assessment was arrived at using the same methodology as other condominiums in the Town and was proportionate and equitable.

The board's inspector visited the Property, reviewed the property-assessment card, reviewed the file and filed a report with the board (previously copied to the parties). This report recommended an assessment of \$145,000 to \$160,000.

Note: The inspector's report is not an appraisal. The board reviews the

report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. Page 3
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BOARD FINDINGS

Based on the evidence, the board denies the appeal, finding the Taxpayer failed to prove overassessment for the following reasons:

- 1) the Taxpayer's purchase of the Property was not representative of fair market value;
- 2) the Taxpayer's appraisal was not a reliable indicator of value;
- 3) the Town supported the assessment; and
- 4) the board's inspector concluded the assessment was not excessive.

Taxpayer's Purchase Price

RSA 75:1 requires that assessments be based on market value. In this case, the Taxpayer argued the Property was assessed at a higher percentage of market value than the general level of assessment in the Town. We find, however, the Taxpayer's purchase price was not representative of fair market value. "Market value is the cash price a property would bring in a competitive and open market. In such a market, sufficient time has been allowed for a sale, the buyer and seller are not subject to undue pressure, and both are well informed." The International Association of Assessing Officers, Property Appraisal and Assessment Administration, 35 (1990); see also Society Hill At Merrimack Condominium Association v. Town of Merrimack, ___ N.H. ___, slip op. at 2 (December 28, 1994) (hereinafter "Society Hill") (fair market value defined as "the price which in all probability would have been arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to

buy, taking into account all considerations that fairly might be brought forward and reasonably given substantial weight and such bargaining."); Board Inspector's Report at 2-3. Based on these definitions, the Taxpayer's purchase price was not Page 4
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representative of market value. See Society Hill, ___ N.H. at ___, slip op. at 1-3 (supreme court affirmed superior court's conclusion that condominium auction sales did not represent market-value sales).

The board's conclusion that the purchase price was not representative of market value is based on the auction and is supported by the subsequent sales in the development. There were 35 bidders at the auction, and seven of the development's eight units were sold. The auction was an absolute auction, and the brochure stated: "No Minimum Bid ` No Reserve ` No Hold Backs[.]" The brochure also stated: **"You Decide!** Buy the home you want... At the price you want to pay[.]"

The board's inspector and the Town concluded, based on their investigations, that the auction seller was under undue pressure to sell. The Taxpayer disagreed with this, but the evidence supports a finding that the seller was under undue duress. Both a bank representative and a purchaser of the property indicated the development was about to be repossessed and/or foreclosed upon.

Additional information concerning why the auction did not produce values representative of market value were discussed in the inspector's report at 3, and we adopt his analysis.

Taxpayer's Appraisal

The Taxpayer's appraisal is not accepted as a reliable market-value

indicator as of the April 1, 1991 assessment date. First, the appraisal was as of August 1992, but the assessment date was April 1, 1991. Therefore, the appraisal should have been time adjusted to the April 1, 1991 assessment date.

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Assuming condominiums changed at the same rate as other property in the Town, the \$113,000 would be time adjusted by 8%, resulting in a \$122,040 figure. However, the major flaw with the appraisal was its use of properties in Hooksett as comparables to this Property. Clearly, Hopkinton is a more upscale and desirable (real-estate wise) than Hooksett, and the appraisal did not adequately adjust for this market difference. Additionally, this Property's development is far superior to the appraisal's comparable no. 3 at Cranmore Ridge in Concord, which is not as nice as the Property's development and is a larger development with many more units and with multi-family garden-style housing.

Assessment Supported by the Town

The Town presented sufficient information to demonstrate that the assessment was consistent with assessments in the Town and consistent with market value. This evidence included comparable condominium sales and even a subsequent sale in this development.

Inspector's Report

The board's inspector, in addition to researching the circumstances surrounding the auction, researched the subsequent sales in this development, which showed dramatic increases in value from the auction prices. He also researched other condominium sales in the Town. He then determined an appropriate value per-square foot and applied that to the Property's square

footage. His report, which was provided to both parties, showed the assessment was not excessive.

For all of the above reasons, the board denies this appeal.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within thirty (30)

days

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of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 in law. This, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Virginia C. Beecher, Taxpayer; Mary E. Pinkham-Langer, representative for the Town of Hopkinton.

Dated:

Melanie J. Ekstrom, Deputy Clerk