

Jill Busny

v.

Town of Goffstown

Docket No.: 11038-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$80,800 on a condominium unit in Timberwood 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 abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was listed for sale for over a year and finally sold for \$41,500 on April 9, 1992;
- (2) comparable units were selling for \$45,000 to \$49,900; and

(3) Bank East estimated a \$40,500 appraised value.

Page 2

Busny v. Town of Goffstown

Docket No.: 11038-91PT

The Town argued the assessment was proper because:

- (1) the Property's 1992 sale does not reflect the April 1, 1991 market value;
- (2) the Property was purchased in November, 1987 for \$74,200 and no assessment adjustments have been made since the 1988 revaluation because of the declining market; and
- (3) the Town's assessment-to-sales-price ratios were well within range of the Town's 1991, 122% equalization ratio.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper. 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. In this case, the board did not rely on the inspector's report.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$52,700. The Taxpayer testified the Property's sales price was \$41,500 on April 9, 1992. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough,

120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was

Page 3

Busny v. Town of Goffstown

Docket No.: 11038-91PT

an arms-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988).

The Taxpayer stated that comparable units were selling for \$45,000 to \$49,900, but offered no substantiating documentation to support their contention. Further, the Taxpayer stated that Bank East had estimated a \$40,500 value but offered no data to support that claim.

However, the Town submitted eight sales which took place between January, 1990 and June, 1991. Of the six sales that occurred between January 30, 1991 and June, 1991, the indicated range of values was \$54,000 to \$62,000.

The subject's sale, when time adjusted back to April 1, 1991, falls on the low end of the indicated range at \$52,700. Therefore, the board finds an assessment of \$52,700 is proper.

If the taxes have been paid, the amount paid on the value in excess of \$52,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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

Page 4
Busny v. Town of Goffstown
Docket No.: 11038-91PT

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

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 Scott Property Tax Advisors, Inc., Agent for Jill Busny, Taxpayer; and Chairman, Selectmen of Goffstown.

Dated: January 4, 1994

Lynn M. Wheeler, Deputy Clerk

0009

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Docket No.: 11038-91PT

ORDER

This order relates to the Town's motion for reconsideration. The Town is correct in that the board neglected to apply the equalization ratio of 122% to the \$52,700 value. Therefore, the board amends page three of its decision as follows:

Therefore the board finds the fair market value of the Property as of April 1, 1991 to be \$52,700 for an equalized assessed value of \$64,300.

If the taxes have been paid, the amount paid on the value in excess of \$64,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a . . .

With respect to the Town's request for the board to reconsider its decision based on an earlier decision made regarding Timberwood Condos, the board denies this request. Had the Town wished the board to take judicial

Page 2
Busny v. Goffstown
Docket No. 11038-91PT

notice of the evidence submitted in the prior cases and the board's decision,
the request should have been made as part of the Town's presentation.

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 Scott Property Tax Advisors, Inc., Agent for Jill Busny, Taxpayer; and the Chairman, Selectmen of Goffstown.

Date: April 12, 1994

0009

Lynn M. Wheeler, Deputy Clerk