

Arthur A. Shaughnessy

v.

Town of Hudson

Docket No.: 11106-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$135,500, a condominium unit at Quail Run (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 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's original sale price was \$104,900;
- 2) the Property is in a condominium complex that has no amenities; yet, the Town has assessed the Property for future amenities;

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3) due to the depressed economy and property values still decreasing, lowering the assessments would be appropriate;

4) recent sales within the complex have sold for no more than \$85,000 (Unit #40);

5) due to the FDIC taking over, the development has not been completed, i.e., boarded up homes, open foundations, and unfinished landscaping which distracts the Property values, causing little desire to buy;

6) the basement should not be assessed as it is not considered living space; and

7) condominiums are assessed at a higher rate than individual home owners.

The Town argued the assessment was proper because:

1) the value placed on the amenities is the owners share of the land and other amenities such as pools, recreation centers, etc., if they exist;

2) there is no evidence that homes are assessed lower;

3) the basement's 15% value is the contribution to the total value and was not recognized as living area;

4) records indicated that Taxpayer's Property sold in November, 1990 for \$134,900;

5) the sale of Unit #40 was a result of a relocation which was not considered an arms-length transaction;

6) even though the condominium project is in financial trouble, sales have been brisk; and

7) comparables indicate the Taxpayer had been assessed equally and

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proportionately.

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The board's inspector reviewed the assessment-record card, reviewed 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 and equally assessed. 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 Findings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The assessment-record card indicates that the Property was purchased in November, 1990 for \$134,900. The Taxpayer stated the Property was purchased for \$104,900 but when this information was rebutted by the Town, the Taxpayer did not refute the information. Therefore, the board assumes the November, 1990 \$134,900 sales price is correct. While the sale of the Property 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 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 sale occurred four months prior to the date of assessment, April 1, 1991, and is a strong indication of its value at

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that time.

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Further, the comparable sales submitted by the Town support the value. The Taxpayer may be correct that values have dropped due to FDIC takeover but the Taxpayer offered no evidence of when values began to decline and when the takeover occurred.

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. 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) days 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. Thus, new evidence and new arguments are only allowed in very

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur A. Shaughnessy, Taxpayer; and Hudson Board of Assessors.

Dated: April 7, 1994

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Melanie J. Ekstrom, Deputy Clerk

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