

Henry J. & Mary Jo Stonie

v.

Town of Hampton

Docket No.: 11153-91PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments on two condominiums (the Units): "Unit 3B" \$209,300; and "Unit 3C" \$219,300. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessments were 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 carry their burden.

The Taxpayers argued the assessments were excessive because:

- (1) the Units were finished in 1990 when the market was dropping and costs were increasing yet the assessments increased;
- (2) the Taxpayers were the developers and these Units were the last two that had not been sold;
- (3) the Taxpayers were carrying the Units and thus requested abatements; and
- (4) if the Taxpayers had sold the Units for the assessments, the Taxpayers would not have recouped their costs.

The Town argued the assessments were proper because:

- (1) the department of revenue's equalization study and the Town's own ratio study showed a 103%-102% assessments-to-sales ratio;
- (2) a ratio study of ocean front sales showed the ocean front sales ratios were in line with the other sales ratios (These ocean front sales were all house sales.);
- (3) the assessments were supported by the sales in the development and the assessments may have even been too low; and
- (4) the assessments included a developer's discount.

#### **Board's Rulings**

Based on the evidence, we find the Taxpayers failed to show over assessment.

Assessments must be based on market value, not the value to the individual owners. See RSA 75:1. The Taxpayers, however, based their arguments on their own financial circumstances. They argued they should be granted abatement because of their construction and carrying costs. Specifically, the Taxpayers stated they were asking \$325,000 for these Units not because the Units could have been sold for \$325,000 but because the Taxpayers wanted to hold onto the Units to see if their costs could be recouped.

The Taxpayers did not present any credible evidence of the Unit's fair market values even though several other units at this development had sold near the assessment date. To carry their burden, the Taxpayers should have made a showing of the Units' fair market values, which they could have done using the sales in the development. These values would then have been

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compared to the Units' assessments 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 Town, however, presented market data, relying on the sales in the development. See Municipality B. Where it is demonstrated that a sale, was an arm's-length market sale, the sale's price is one of the "best indicators of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). The sales of similar units at this development are good value indicators for the Units. The sales at this development in the 1990-1991 ranged between \$235,000 to \$325,000. The 1990 sales alone were \$235,000 to \$270,000; the 1990 sales would have been available for the April 1, 1991 assessment date.

Based on the sales at this development, it is clear the Units were not overassessed, and the appeal must be denied.

The board gave serious thought to increasing these assessments under RSA 71-B:16 II (board may order reassessment of unequally taxed property). The sales in the development raised a serious question of underassessment. Additionally, allowing a developer's discount of the magnitude used raises the question of underassessment, especially when the Taxpayers' carrying costs were being incurred because the Taxpayers did not want to sell the Units at the present market value but wanted to wait for a better market. But we decided not to assert our RSA 71-B:16 II authority because there was insufficient information to conclude underassessment.

### Costs

The board is authorized to order one party to pay the other party's costs when the board concludes an appeal was "frivolously brought, maintained or defended." TAX 201.39; see also RSA 71-B:9 ("Costs may taxed as in the superior court."). This appeal was both frivolously brought and maintained. The Taxpayers knew what the other units were selling for, and the assessments here were below these sales prices. The Taxpayers, however, wanted an abatement because of their own financial situation, which has nothing to do with market value or assessing practices unless reflective of the market.

The Town shall, within 10 days of the clerk's date below, file with the board an affidavit of costs, including mileage and time on March 29, 1995. The Town shall copy the Taxpayers, and the Taxpayers shall have 10 days to file any response to the affidavit. The board will then issue an order of costs.

### Rehearing and Appeals Procedures

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a

limited to those stated in the rehearing 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

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Henry J. and Mary Jo Stonie, Taxpayers; and Chairman, Board of Selectmen of Hampton.

Dated: April 6, 1995

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Valerie B. Lanigan, Clerk

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