

Anne E. Richards

v.

Town of Atkinson

Docket No.: 11379-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$136,500 (amenities \$38,000; buildings \$98,500) on a condominium unit in the Bryant Woods 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 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 and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property has no attic, the basement is unfinished, and the fireplace is metal;

- (2) the Town may have assessed the garage with the wrong square footage;
- (3) the assessment is higher than the Property's 1990, \$120,000 purchase price;
- (4) the Property's assessment increased \$3,000 in one year's time, yet other assessments in the Town decreased;

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- (5) the amenities were included in the purchase price and paid for at closing and should not be assessed separately year after year; and
- (6) comparable properties have lower assessments.

The Town argued the assessment was proper because:

- (1) the garage's assessment was based on exterior measurements;
- (2) the assessment increased \$3,000 because the metal fireplace was erroneously omitted prior to 1991, and the clubhouse/pool was completed as of April 1, 1991;
- (3) the amenities' assessment reflects the value placed on common land, clubhouses, location, etc., and was based on actual sales;
- (4) a 1991 sales analysis determined that condominiums were being assessed equitably with other properties in the Town;
- (5) the Taxpayer's Ridgewood Drive comparables were not constructed as of April 1, 1991, and the Iron Wood Lane comparables were assessed consistently with the Property; and
- (6) a unit adjacent to the Property sold in February, 1991 for \$118,500, which supports the Property's assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the

Property was disproportionately assessed. 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.

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Further, neither party challenged the Department of Revenue Administration's equalization ratio of 117% for the 1991 tax year for the Town of Atkinson. The Property's equalized value is \$116,700 ($\$136,500 \div 1.17$). The Property was purchased in June, 1990 for \$120,000. The board finds the assessment is supported by the subject's purchase price and the comparable sale utilized by the Town.

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 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

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 Anne E. Richards, Taxpayer; and Chairman, Selectmen of Atkinson.

Dated: April 12, 1994

Lynn M. Wheeler, Deputy Clerk