

Lewis Builders Development, Inc.

v.

Town of Atkinson

Docket No.: 11560-91-PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 total assessment of \$2,463,000 on 146 lots assessed at \$20,000 per lot (the Units).

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 assessments were excessive because:

- (1) the Units were planning-board approved but unbuilt;
- (2) the Units did not have interior roads or utilities and had not been approved by the attorney general under RSA ch. 356-B;
- (3) the Units were part of a condominium and thus their use was restricted;
- (4) other paper lots were adjusted but the Units were not;
- (5) these Units did not require any Town services; and

(6) an appraisal estimated an April 29, 1991 value of \$1,752,000, based on a \$12,000 per-unit value (The appraisal was actually for 180 units at \$2,800,000.).

The Town argued the assessments were proper because:

- (1) the sales indicated a \$400,000 amenity value;
- (2) the Taxpayer's appraisal was for a "dumping value" based on distress sales and inferior properties without any adjustments (The Town pointed out a number of disagreements with the appraisal.); and
- (3) this development has superior location and recreation facilities

The Town generally agreed with the Taxpayer's description of the condition of the development, adding that permits could have been obtained by bonding for the roads. The Town indicated on the plans the status of the road and utility work based on conversation with the Taxpayer.

Board's Rulings

Based on the evidence, the board concludes the Taxpayer failed to prove disproportionality. The board does not accept the Taxpayer's appraisal as evidence of disproportionality for the following reasons:

- 1) the appraisal did not include any adjustment grid or explanation for adjustments used in arriving at the per-unit value;
- 2) the appraisal admitted the property has a superior location compared to the comparables, but there was no adjustment or explanation for how this factor was addressed;

3) the property has superior amenities to the comparables, but the appraisal did not explain what adjustments, if any, were made for this factor;

4) the appraisal relied upon bank sales and did not make any adjustments to those bank sales to reflect market value (The board does not consider bank sales to be market-value sales because banks are not your typically motivated seller.);

5) the absorption rate does not match the property's actual history, which given the property's superiority should have been considered; and

6) the discounted cash flow was based on a flawed absorption rate.

The board's review of the evidence is supported by the board's inspector's report. We will not reiterate that report here, but we do incorporate it in this decision. Specifically, Mr. Bartlett concluded the units had a range of value between \$2,040,000 and \$2,340,000. This range approximates the total equalized assessment of \$2,105,100.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 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 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 prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter A. Lewis, President of Lewis Builders Development, Inc., Taxpayer; and the Chairman, Board of Selectmen of Atkinson.

Dated: November 28, 1994

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Valerie B. Lanigan, Clerk