

David C. and Marianne D. Stephens

v.

Town of Hanover

Docket No.: 11989-91 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$160,400 (land \$37,600; building \$122,800) on a condominium unit in The College Hill Condominiums (the Property). The Taxpayers 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 Taxpayers have the burden of showing the assessment was 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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:
(1) the Property was purchased in September, 1991 for \$125,000 -- the original asking price was \$149,000 and was reduced because of the market;

(2) a 1991 bank appraisal estimated a \$126,000 value;

(3) the assessment was estimated rather than based on comparable sales;

(4) five units identical to the Property sold between \$125,000 and \$127,000 in 1991, and other condominiums in the Town sold between \$125,000 and \$135,000 in 1992;

(5) the general real estate market fell 25 to 30%, but condominiums values have steadily declined at a higher percentage than other properties; and

(6) the seller did not file bankruptcy or have auction sales because the Property was on the market for at least two years.

The Town argued the assessment was proper because:

(1) the Property, as well as the Taxpayers' five comparables, were seller- bankruptcy sales and, therefore, the prices were not reflective of the true market;

(2) only 13 condominium sales occurred between 1987 and 1992, 10 of which were foreclosure sales; and

(3) when the Taxpayers' sale price is adjusted upwards for foreclosure and equalized by the 1991 equalization ratio (109%), the adjusted sale price is well within range of the assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$136,340, which when equalized by the equalization ratio, calculates to a 1991 market value of \$125,100. The board concluded a -15% market adjustment was required to reflect the condition of the condominium market in general and the condition of this particular development. The Taxpayers submitted sufficient evidence to demonstrate that the Property was worth approximately \$125,000 in 1991. While the evidence was conflicting about whether the company that sold to the Taxpayers was a typical seller, it appears the seller made adequate marketing attempts and the condominiums sold at a consistent price. The board, based on its

Page 3

Stephens v. Town of Hanover

Docket No.: 11989-91PT

experience, concludes that \$125,000 represents the market value of the Property. We have little doubt that if the Taxpayers had tried to sell their Property in 1991, they would have received approximately \$125,000. In other words, when the Taxpayers purchased the Property, they paid market value and did not pay below market value with any windfall they could realize upon a later sale in 1991.

If the taxes have been paid, the amount paid on the value in excess of \$136,340 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\City shall also refund any overpayment for 1992 and 1993. Until the Town\City undergoes a general reassessment, the Town\City shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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

Page 4

Stephens v. Town of Hanover

Docket No.: 11989-91PT

541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David C. and Marianne D. Stephens, Taxpayers; and Chairman, Selectmen of Hanover.

Dated: April 19, 1994

Lynn M. Wheeler, Deputy Clerk

0008

Page 5

Stephens v. Town of Hanover

Docket No.: 11989-91PT

David C. and Marianne D. Stephens

v.

Town of Hanover

Docket No.: 11989-91 PT

ORDER

This order responds to the "Town's" rehearing motion, which is granted.

The Town argued the board erred by relying upon the bank sales and the bank-related sales. The Town, however, agreed the assessment should be reduced to \$147,150.

"It has been said that '[t]he search for 'fair market value' is a snipe hunt carried on at midnight on a moonless landscape.'" Fusegni v. Portsmouth Housing Authority, 114 N.H. 207, 211 (1974) (citations omitted). This snipe hunt has been made more difficult by the occurrence of bank sales and bank-related sales. Moreover, in valuing, property judgement is the touchstone. Public Service Co. v. Town of Ashland, 117 N.H. 635, 639 (1977).

Page 6

Stephens v. Town of Hanover

Docket No.: 11989-91PT

After reviewing this file, including the Town's rehearing motion, the board has decided to grant the rehearing motion, and order an assessment of \$144,360. This assessment equates to a \$132,400 market value, and the revised assessment was arrived at using a -10% market adjustment rather than a -15% market adjustment.

This revised figure is more consistent with:

- 1) the appraisal principle that bank sales and bank-related sales do not represent market value sales;
- 2) the evidence that the Taxpayers' purchase was a bank-related sale; and
- 3) the Taxpayers' 1993 \$135,000 sales price.

If the taxes have been paid, the amount paid on the value in excess of \$144,360 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.

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

Page 7

Stephens v. Town of Hanover

Docket No.: 11989-91PT

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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David C. and Marianne D. Stephens, Taxpayers; and Chairman, Selectmen of Hanover.

Dated: May 31, 1994

0008

Valerie B. Lanigan, Clerk