

Robert J. Mullen, Docket No.: 12998-92PT,

Paul Bates, Docket No.: 13034-92PT,

Steven H. Crowell, Docket No.: 12964-92PT

v.

Town of Francestown

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessments of \$82,200 each on condominium units #4, #6 and #12 at Condominium at Mountain 1 (the Properties). These appeals were consolidated for hearing.

For the reasons stated below, the appeals for abatements are granted.

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 carried their burden and proved disproportionality.

The Taxpayers argued the assessments were excessive because:

(1) the units were purchased as ski lodges and with both the demise of the Crotched Mountain Ski Resort and the general economy, the values are significantly lower;

- (2) an April 1992 appraisal estimated the fair market value of each unit to be \$45,000; and
- (3) the sale of unit 6 in 1989 is not relevant to the 1992 market value.

The Town argued the assessments were proper because:

- (1) the units were purchased as rental units in conjunction with the ski area and are now fully rented residential units;
- (2) one legitimate sale occurred in October 1989 which supports the assessment;
- (3) the Taxpayers' comparable number 1 (unit 15) was a foreclosure sale; and
- (4) the entire Town was updated in 1993 and the 1993 assessments were \$58,500 each.

The board's inspector reviewed the property-assessment cards, reviewed the parties' appraisal and filed a report with the board (copy enclosed). 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.

Board's Rulings

Based on the evidence, we find the correct assessment for each unit should be \$56,250. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and

building, and the Town shall make this allocation in accordance with its assessing practices. These assessments are ordered because:

1) the Town's only market evidence of an arm's-length sale was the sale of unit 6 during the latter part of 1989; however, given the volatile nature of the market from late 1989 to 1992, it is difficult to establish a value based on a sale two to three years prior to the date of assessment;

2) while it would be preferable to have additional market data than that supplied by the Taxpayers, at least one sale identified by the Taxpayers (unit 16 which sold for \$45,800 in April 1992) was determined by the board's inspector to be the best indicator of value; and

3) therefore, the board determines the proper assessments as of April 1992 to be \$56,250 for each unit based on an estimate of market value of \$45,000.

If the taxes have been paid, the amount paid on the values in excess of \$56,250 for each unit 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1993 and 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessments for subsequent years with good-faith adjustments under RSA 75:8.

RSA 76:17-c I.

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;

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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 prerequisite for appealing to the supreme court, and the grounds on appeal are 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard D. Rockwood, representative for the Taxpayers; and Chairman, Selectmen of Francestown.

Dated: January 24, 1996

Valerie B. Lanigan, Clerk

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