

James J. and Madeline A. McGoff

v.

Town of New London

Docket No.: 13791-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$140,400 on a condominium unit (unit #14) in the Hilltop Place 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 their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property is a second-floor unit, the attached garage has no direct access into the unit, and the landscaping/views are inferior to other units, all of which have a negative impact on the value;

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(2) the Property was purchased in May 1993 for \$85,000 after being listed on the market for over a year;

(3) first-floor units with better views sold for \$96,500 and \$105,000 and were assessed \$132,600 and \$136,200 respectively;

(4) the Town used 1992 sales as comparables, and one comparable is far superior to the Property; and

(5) the assessment should be \$100,000.

The Town argued the assessment was proper because:

(1) the Taxpayer's comparable sales were probate sales, which are typically sold below market value;

(2) the Town's three comparable sales prices are closer in range to the assessed values than the Taxpayers' comparables; and

(3) a comparable second-floor unit sold in October 1992 for \$131,500.

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

Based on the evidence, the board finds the correct assessment should be \$133,400. This assessment is ordered because:

1) the board has determined by reviewing the sales and the descriptive evidence that the Property should receive a 5% adjustment to account for its inferior location compared to other units, the small size and utility of the unit's limited common area and the indirect access to the garage; and

2) of all the sales submitted, unit #96 is the most comparable; however it is slightly smaller than the Taxpayers' but in a superior location within the development.

No further adjustment is warranted because the board finds that the market value sales generally support the revised assessment. The board finds

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the probate sales submitted by the Taxpayers are not truly reflective of market value when compared to non-probate sales.

If the taxes have been paid, the amount paid on the value in excess of \$133,400 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 1994. 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 thirty (30) 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James J. and Madeline A. McGoff, Taxpayers; and Chairman, Selectmen of New London.

Dated: July 26, 1995

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Lynn M. Wheeler, Deputy Clerk

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