

John and Ruth Lepes

v.

Town of Thornton

Docket No.: 14739-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$109,300 on condominium unit A-6 located at Gateway 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, 1993 for \$45,000 which included \$2,000 value of furnishings; and a \$3,000 intangible value to the purchaser for its location next to relatives;

- 2) the history of listing prices reflects the progressive reductions in fair market values; and
- 3) the fair market value as of April 1, 1993 was \$40,000.

The Town argued the assessment was proper because:

- 1) the Town was revalued in 1989 and since that time most properties have devalued at the same rate, thus equalizing the tax burden;
- 2) all end units have been assessed the same; and
- 3) all units have been assessed proportionally.

BOARD FINDINGS

Based on the evidence, the board finds the proper assessment to be \$81,400. The Taxpayers stated the Property's purchase price was \$45,000 which included furnishings and an added value for its location next to relatives. While the purchase price is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). In this case, there were sales of three other units at Gateway Condominiums and a sale at Waterville Acres. Analyzing, comparing, and weighing sales data and then correlating the sales to the subject property arrives at the best indication of market value. Of the comparable sales, the only unit which sold in the \$40,000 range was the subject; all others sold between March 1992 and July 1993 and in the range of \$52,500 to \$60,000. Although the Taxpayers argued that these sales included furnishings and decorations, no evidence was submitted to substantiate the claim or to describe the quality and quantity of the furniture and appliances.

Although the Taxpayers did pay less for their unit, the sales evidence seems to indicate that there was enough interest in the units to support a value in the \$50-60,000 range. Without additional evidence as to the arm's-length nature of the sales and the amount of personal property included, the board must use its best judgment in determining a value for the subject. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Based upon the evidence and the board's judgment and experience, the board finds the market value as of April 1993 to be \$55,000 for a proper assessment of \$81,400 ($\$55,000 \times 1.48$ equalization ratio for 1993).

The board must comment on the Town's evidence in this case which consisted solely of copies of assessment record cards of comparable units. No sales evidence was provided by the Town and the Town did not comment on any of the sales data provided by the Taxpayers. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128

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N.H. 795, 796 (1986). The Town must annually review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town. RSA 75:8 states:

The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal ***.

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty, a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

If the taxes have been paid, the amount paid on the value in excess of \$81,400 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. 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,

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the board's decision was erroneous in fact or in law. This, 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. 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

George Twigg, III, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John and Ruth Lepes, Taxpayers; and Chairman, Board of Selectmen.

Dated: May 10, 1996

Valerie B. Lanigan, Clerk

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