Scott D. and Debora M. Cote
and Marlene A. Cote

v.

Town of Bristol

Docket No.: 14582-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $125,800 on a condominium unit in the Manor Estates Condominiums (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the board's prior decision (docket no. 8538-90) found a $150,000 assessment;

(2) the Town performed an assessment update but used the prior appealed assessment ($169,900) instead of the ordered assessment ($150,000);

(3) the Property was purchased furnished in October 1990 for $132,000;

(4) recent sales demonstrated overassessment;

(5) the Property is located across the road from the lake, and this affects the Property's value; and

(6) the assessment should have been $110,900 to $115,900.

The Town argued the assessment was proper because:

(1) back units were assessed less than waterfront units; and

(2) the $120,500 sale of unit 42 supported the assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not show the assessment was unreasonable. While the assessment was $125,800, the Property's equalized assessment was $120,960 ($125,800 ÷ 1.04). Therefore, to show overassessment the Taxpayers should have shown that the Property was worth less than $120,960. The Taxpayers did not do this. The two sales of units off the water -- Unit 24 in August 1993 for $115,000 and Unit 42 in July 1996 for $122,500 -- demonstrated the Property's equalized assessment was reasonably accurate. Additionally, the Town stated that the lakefront units were assessed higher than the nonlakefront units, and this was consistent with the listings, which showed lakefront units were more valuable than nonlakefront units.

Much of the Taxpayers' concerns related to the Town's failure to use the $150,000 ordered assessment. Towns are required by RSA 75:8 to annually review sales and assessments, and thus, a board decision for a prior year may not reflect recent market data. The board is entitled to give its prior decisions the weight the board deems appropriate. In this case, given the

recent sales and the equalized assessment, the board decided to give the prior decision no weight.

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; 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

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Scott D. and Debora M. Cote and Marlene A. Cote, Taxpayers; and Chairman, Selectmen of Bristol.

Dated: September 16, 1996

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Valerie B. Lanigan, Clerk

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