

Louis A. and Mary B. Casinghino

v.

Town of Hampton

Docket No.: 15051-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$154,800 on a condominium unit in the St. Magnus 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 a 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 prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

- (1) the unit is located in the back building (Building C), which has limited ocean views and limited lawn area;
- (2) the Property only has a loft on the third floor compared to other units that have a $\frac{3}{4}$ -story third floor;
- (3) the Town did not allow for enough depreciation on the building;

- (3) the amenities value assigned to Building C was increased from 1993 to 1994 without any increase to the other buildings and had the Town increased the subject unit similar to others, it would have been assessed for \$4,400 less;
- (4) the amenities assessment should be based on the percentage of undivided interest in the development;
- (5) the transformer for all the condominiums is directly in front of the unit and detracts from the Property's value; and
- (6) sales supported a \$150,000 assessment.

The Town argued the assessment was proper because:

- (1) the transformer does not affect the Property's value because the transformer is behind a four-foot high fence, and the transformer is covered with shrubs;
- (2) the Town was revalued in 1994, using sales from 1992 through 1994;
- (3) amenities values were adjusted for units with inferior views; and
- (4) two sales in Building C, when adjusted, supported the Property's assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not show the Property was overassessed.

To begin with, the Property's equalized assessment was \$157,960 (\$154,800 assessment ÷ .98 equalization ratio). Therefore, to prevail, the Taxpayers were required to show that the Property was worth less than \$157,960. Because assessments must be based on market value, see RSA 75:1, the Taxpayers should have introduced market data to show overassessment. The Page 3
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only market information introduced by the Taxpayers was the sales of "Units" 5 and

26. Unit 26 was a bank sale, and therefore, the board will not give that sale any weight. Additionally, the board could not conclude that the sale of Unit 5 was a fair-market transaction because the Taxpayers did not submit sufficient evidence to show that the sale was in fact a market sale. It appears the Unit 5 sale was not used by the revenue department in its equalization study. The Town also did not include the sale in its sales listing, but the Town stated that it had concluded it was not a market sale. Without these two sales, the Taxpayers did not have any market information for the board.

The Town, however, presented two sales -- Unit 23 and Unit 19 -- to show that the Property's assessment was consistent with market value. Unit 23 (an abutting unit) sold in 1993 for \$164,000. Deducting \$6,700 because Unit 23 is a $\frac{3}{4}$ -story and the Property is a $\frac{1}{2}$ -story on the third floor indicates a \$157,300 market value. Unit 19 sold in July 1994 for \$170,500. Deducting \$6,700 for $\frac{3}{4}$ story and deducting \$5,000 for location (end unit and better view) results in a \$158,800 market value. These sales support the Property's \$157,960 equalized value.

Turning briefly to the Taxpayers' other arguments, the board finds as follows.

1) The Town did consider the different attributes that each unit had, and the assessments included adjustments for location, views and whether a unit was an end unit or a middle unit.

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2) The Taxpayers did not introduce sufficient evidence to show that the depreciation factor was incorrect. First, depreciation is used to arrive at an ultimate market value, and the board has concluded the Property had a market value of approximately \$157,960. "Justice does not require the correction of errors of

valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899). Second, even the Taxpayers admitted the Property had been well maintained.

3) The Taxpayers' comparison of the 1994 versus 1993 assessed values and the comparison of assessments based on a percentage interest in the condominium do not establish overassessment.

4) The Taxpayers did not show the transformer adversely affected the Property's value, especially because the transformer is located behind a fence and is screened by bushes.

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 Page

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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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Louis A. and Mary B. Casinghino, Taxpayers; and Chairman, Selectmen of Hampton.

Date: October 18, 1996

Valerie B. Lanigan, Clerk

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