

Mark P. Madsen

v.

Town of Goffstown

Docket No.: 15055-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$93,200 on a residential condominium unit (the Property). The Taxpayer 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 Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- 1) an appraisal report estimated a fair market value of \$61,500 as of April 1, 1994; and
- 2) a fair market value would be \$60,000 based on two sales.

The Town argued the assessment was proper because:

- 1) in 1993 Sablebrook condominiums were adjusted downward by 10%;
 - 2) two of Taxpayer's comparables (41A and 49A Lindsey Way) were not arm's-length transactions;
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- 3) there was sales activity on condominiums beginning in the summer of 1994; and
 - 4) based on the comparables and the assessment/sales ratio analysis, Taxpayer's assessment is equitable.

BOARD FINDINGS

Based on the evidence, the board finds the proper assessment to be \$87,800, which is based on a market value finding of \$67,500 multiplied by the 1.30 equalization ratio. The board makes this finding based on the following.

1) The Taxpayer's appraisal could not be relied upon because 49A Lindsey Way was a sale following a foreclosure, and 41A Lindsey Way was the sale from a broker to her brother. Additionally, as explained below, other market evidence does not support the appraisal.

2) The board places most weight on the board's review appraiser's report. Mr. Bartlett reviewed this file and the file in Schult v. Town of Goffstown, Docket No. 15059-94PT, visited the appealed properties and the comparable properties and then performed a valuation analysis that indicated a market value range of \$65,200 to \$67,500. The board on its own, performed a confirmatory analysis by doing the following: 1) selected the sales from Mr.

Bartlett's sales grid in addendum B that were used by the revenue department in the ratio study or were not contested by the Town (33B Appletree Drive, 16B Harry Brook Drive, 7A Belgian Court, 150B Wallace Road, and 42-A Morgan Circle -- collectively "the Comparables"); 2) adjusted the Comparables' sales prices for extra features such as garages or fireplaces, yielding adjusted sales prices; 3) calculated a square-foot value for each comparable, using the adjusted sales prices; 4) adjusted the square-foot prices by a size factor, which was based on comparing the size factor used on the property-record cards; and 5) adjusted the square-foot values by any building quality factor. The board then eliminated the 7A Belgian Court sale because it was far inferior both in building and in neighborhood to the Property. The board also eliminated 42-A Morgan Circle for the same reasons and because of its smaller size. The board then reviewed the remaining three sales on an adjusted square-foot basis. The board could not completely perform

this analysis Page 3
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because of locational and neighborhood differences that the board was not confident about an adjustment. However, this analysis confirmed that the board's review appraiser's report represented a reasonable assessment on the Property. Because the burden of proof is on the Taxpayer, the board chose the higher end of Mr. Bartlett's value range.

If the taxes have been paid, the amount paid on the value in excess of \$87,800 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 1995 and 1996. 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. 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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark P. Madsen, Taxpayer; and Chairman, Board of Selectmen.

Date: May 16, 1997

Valerie B. Lanigan, Clerk