

Nicholas Iacuzio

v.

Town of Grantham

Docket No.: 15366-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$211,850 (amenities \$130,000; buildings \$81,850) on a residential condominium in the Eastman Lake Condominiums (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried the burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased in January 1994 for \$189,500;
- (2) the Town has acknowledged there was a disparity between recent sales to assessments;
- (3) four recent sales (including the subject) indicated a range of value of sales prices of \$94 to \$161 per square foot of gross living area; and

(4) the Property should be assessed in the range of \$151 to \$161 per square foot of gross living area.

The Town argued the assessment was proper because:

- (1) the assessments have remained consistent since the 1986 revaluation; and
- (2) in 1994, there were only 7 verifiable condominium sales, and there was insufficient information to justify an adjustment.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$168,655, which is based on a market value of \$189,500 and an .89 equalization ratio.

Where it is demonstrated that a sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). The Taxpayer's representative stated that there was no relationship between the buyer and seller, therefore qualifying the sale as an arm's-length transaction. The Taxpayer stated he researched 50 to 60 condominium sales, and only one sale was over \$200 per square foot. The Taxpayer stated the Property's sales price per square foot was \$161, which was consistent with the six other similar condominium sales that were submitted.

Based on the Taxpayer's evidence, the board finds the Taxpayer has shown overassessment, and therefore the assessment is ordered based on the \$189,500 purchase price.

Under RSA 75:8, municipalities are required to annually review market data and to then review assessments to ensure that assessments are proportional. The

board is aware that during the real estate downturn,

different segments of the market were affected at different rates. Specifically, the board has been consistently informed that condominiums lost value faster than the general market lost value. The Town, however, has not been reviewing market information and has not been making any adjustments to the assessments, choosing instead to leave the assessments alone until the next revaluation. The board reminds the Town of its responsibilities under RSA 75:8.

If the taxes have been paid, the amount paid on the value in excess of \$168,655 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. 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.

Member Michele LeBrun was not present during the hearing, but she listened to the hearing tape with Member MacLellan, and they both reviewed the record before deliberations.

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

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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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert K. McDonald, Agent for Nicholas Iacuzio, Taxpayer; and Chairman, Selectmen of Grantham.

Date: September 27, 1996

Valerie B. Lanigan, Clerk

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