

Gary R. George

v.

Town of Wolfeboro

Docket No.: 15427-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$110,700 (buildings \$40,700; amenities \$70,000) on a condominium unit in the Piping Rock Condominiums (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town assessed at \$143,600. 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 denied.

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 failed to carry this burden.

The Taxpayer argued the adjusted assessment was excessive because:

- (1) the Property's close proximity to the docks and beach has a negative impact on the value due to noise and the long access from the parking lot;
- (2) the boathouse is part of the common land maintained by the association and not part of the living area;

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- (3) the Property's proximity to the waterfront should not have an affect on the amenity value because the waterfront is really a detriment;
- (4) the Property has the lowest rents and occupancy rates of all the units, yet has the highest assessment;
- (5) the income received in rents equates to much less than it costs to maintain the Property;
- (6) the Property was purchased in April 1994 for \$13,000; and
- (7) the Property's market value as of April 1, 1994 was \$48,000 to \$52,000.

The Town argued the assessment was proper because:

- (1) the Property was purchased at auction and the selling price is not indicative of market value;
- (2) the assessment was already reduced from \$177,900 to address the Taxpayer's concerns;
- (3) a waterfront unit sold in June 1995 for \$135,000, which supports the Property's assessment;
- (4) the unit furthest from the water sold in December 1995 for \$70,000, which supports that a buyer will pay more for a waterfront unit;
- (5) the assessment includes only the living area and not the boathouse;
- (6) all the waterfront units have a \$70,000 amenity value; and
- (7) recent sales support the Property's assessment.

BOARD'S RULINGS

Based on the evidence submitted, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

The Taxpayer made conflicting statements on the appeal form regarding the market value of the Property. In section II, the Taxpayer indicates that the Property was purchased April 1, 1994 for \$13,000 and that the purchase was an arm's-length transaction and representative of the market. Then, in section V, the Taxpayer states that the market value of the Property was \$48,000 to \$52,000 as of April 1 of the appealed year. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry

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his burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Taxpayer argued that the Town was assessing the lower level of the boathouse as part of the Property. However, the Town stated that while this may have been the case in an earlier assessment, the abatement granted in 1994 reflected this correction and the current assessment has the correct amount of living space attributed to the Property.

The Taxpayer also disputed the amenity assessment for the Property. The Town indicated that the amenity values were consistent for all properties located near or on the waterfront and that the amenity value of other

properties in the Piping Rock Condominium Association dropped as the distance to the water increased. The Town submitted some recent sales data that supported this position.

The Taxpayer owns but did not appeal the assessment on a separate property in the Town. The supreme court has held that the board must consider a taxpayer's entire estate to determine if an abatement is warranted. A taxpayer is not entitled to an abatement unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the general level of assessment in the town. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board was given no evidence regarding the market value of the non-appealed property.

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

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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.

Thus, 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

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 Gary R. George, Taxpayer; and Chairman, Selectmen of Wolfeboro.

Date: May 21, 1997

Valerie B. Lanigan, Clerk

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