

Paul T. and Margaret P. Devine

v.

Town of Conway

Docket No.: 15714-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$65,000 on a condominium unit in the Deerbrook Condominiums (the Property). The Taxpayers 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 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 prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) all units were assessed the same before the revaluation; yet after the revaluation, the Property's assessment increased even though it remained identical to the other units;

Page 2

Devine v. Town of Conway

Docket No.: 15714-94PT

- (2) the Property was assessed \$18,000 more than the abutting unit because of the finished basement, yet the cost to finish a basement was only \$10,000;
- (3) units with superior extra features, i.e., dens, balconies and extra bedrooms, were assessed less than the Property;
- (4) units with more living area had lower assessments; and
- (5) the assessment should have been \$60,650 based on current selling prices.

The Town argued the assessment was proper because:

- (1) a unit, without the finished basement, half bath and two decks the Property has, sold for \$68,000 in June 1996, which supported the assessment;
- (2) the Town remeasured and reinspected the entire condominium complex to assure equity and made adjustments as needed;
- (3) the assessment was based on the market-driven cost approach, and this approach was used for all condominium complexes in the Town;
- (4) the differences in value between the Property and the Taxpayers' comparables are attributed to minor differences in the units, e.g., extra bath, full decks;
- (5) the Property has a bath in the basement, and although it is not "energized," it still has value; and
- (6) the Property was comparably assessed with other units considering the differences in the units.

BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayers failed to carry their burden.

The Taxpayers' arguments as originally raised in their appeal have essentially been addressed by the Town's review and revision of the Deerbrook

Page 3

Devine v. Town of Conway

Docket No.: 15714-94PT

Condominiums in general. Specifically, the Taxpayers' argument that their unit was assessed \$18,000 more than adjoining Unit 18 simply due to a finished basement is no longer correct based on the current 1994 assessment. After the Town's revision, the Property is assessed only \$6,700 more than Unit 18. The board finds this is reasonable and, in fact, supported by the Taxpayers' estimate of the cost to finish the basement. The fact that the plumbing in the basement has not been pressurized and connected is a very minor issue and would not measurably affect the market value of the Property.

The board also extensively reviewed the comparables submitted by the parties to determine whether the Town's revised assessment followed consistent assessment methodology. We find its methodology is consistent and the differences for the square footages for the finished basement and third floor loft area are reasonable as are the minor differences for decks, etc.

Lastly, the only market evidence available was the sale of Unit 16 for \$68,000 in June 1996. This sale supports the Property's indicated market value of \$67,700 by equalizing the assessment ($\$65,000 \div .96$ -Town's 1994 equalization ratio) especially if one considers that Unit 16 does not have a finished basement.

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

Page 4

Devine v. Town of Conway

Docket No.: 15714-94PT

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

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul T. and Margaret P. Devine, Taxpayers; and Chairman, Selectmen of Conway.

Date: October 23, 1996

Valerie B. Lanigan, Clerk

0006