

Lynda L. Caza

v.

Town of Wolfeboro

Docket No.: 15743-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$104,500 (buildings \$34,500; amenities \$70,000) on a duplex condominium unit in the Piping Rock Condominiums (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 denied but the Town is ordered to use the \$103,400 revised value recommended in its brief.

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 assessment was excessive because:

- (1) the Property is assessed as a single cottage when it is really a duplex unit, and the shared wall does not block the noise from the abutting unit;
- (2) the Town assessed the Property with 684 square feet of living area when there is only 542 square feet and the living area is so small that furniture must be moved to access the bathroom;

Page 2

Caza v. Town of Wolfeboro

Docket No.: 15743-94PT

- (3) the Property's access is very steep (150' feet down steep and uneven stairs) with only one parking space up the hill while other units have two spaces located right near the unit;
- (4) the other units' only access to the waterfront is by passing the Property's front door;
- (5) the unit was purchased for \$28,500 in December 1993, and an October 1994 appraisal estimated a \$39,000 value;
- (6) the Property was purchased at auction at half the price of the other units; other units are assessed at 200% of their sale price and the Property is assessed at 365% of its sale price;
- (7) the Property was listed for \$59,900 with no buyers and comparable units list for \$30,000 to \$68,900; and
- (8) the amenity value should be \$28,000 to account for inferior views and location and the total assessment should be \$59,850.

The Town recommended adjusting the assessment to \$103,400 to reflect the unit's smaller size due to the shape of the abutting unit and argued the revised assessment was proper because:

- (1) all the units in Piping Rock were adjusted to be equitable with the Town's general level of assessment and to reflect the condominiums' decrease in

market value;

(2) units closer to the waterfront have higher amenity values;

(3) only one valid sale in the complex occurred between 1991 and 1994; a semi-winterized unit sold in May 1992 for \$80,000 and had an \$80,100 assessment;

(4) a unit close to the Property sold in June 1995 for \$135,000 and was assessed at \$106,900 and another unit sold in December 1995 for \$70,000 and was assessed at \$68,300;

(5) the assessment already reflects the common wall between the Property and the abutting unit;

Page 3

Caza v. Town of Wolfeboro

Docket No.: 15743-94PT

(6) the Property's square-foot value is based on exterior measurements and not interior as the Taxpayer's appraiser used and the Taxpayer's appraiser used only one comparable when standard appraising technique requires three comparable properties;

(7) the Property's access is similar to other units on the third tier, one of which was the \$135,000 sale; and

(8) auction sales are not indicative of market value and the Property was purchased at auction sale.

BOARD'S RULINGS

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The Town has indicated a revised value of \$103,400 would reflect the correct building measurements and the board finds no further adjustments are warranted.

The Taxpayer did not present any credible evidence of the Property's

fair market value. To carry this 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 submitted an appraisal as some evidence of market value. The board gives this appraisal no weight for two significant reasons: 1) the appraiser used only one comparable sale in the sales comparison approach; and 2) he made inconsistent adjustments to the comparable sale. The sales comparison approach has advantages and limitations. The main advantage of the sales comparison approach is that it is not a complicated approach to employ. When there is a sufficient, recent and reliable number of market transactions, the sales comparison approach may offer the most objective indication of market value. Conversely, when there is a limited number of recent sales or there is difficulty in verifying the sales then the sales comparison approach loses

Page 4

Caza v. Town of Wolfeboro
Docket No.: 15743-94PT

much of its reliability. In the appraisal submitted by the Taxpayer, only one comparable sale is used. To say that this one sale provides a reliable indication of market value for the Property is questionable appraisal practice. Additionally, on the adjustment grid of the appraisal, the appraiser makes inconsistent adjustments. Under the heading "location" the appraiser indicates that the Property's view is "good" and the view of the comparable sale is "superior" to the Property. When an attribute of a comparable sale is superior to the Property being appraised, it is necessary

to reduce the value of the comparable sale to reflect this condition. In the instant case, the appraiser has incorrectly increased the value of the comparable sale. Further, the appraiser has made a \$21,000 adjustment to the comparable sale for taxes based on a value for the Property of \$144,500. This exercise is flawed for many reasons, the obvious being that the assessed value is significantly less than that used by the appraiser. For this adjustment to be given any weight, the appraiser would have to show that the market is indeed that sensitive to differences in tax rates. For these reasons, the board finds the appraisal submitted to be of no assistance in determining market value.

The Taxpayer argued that the amenity value was too high given the location of the Property. The Town has consistently given those properties closest to the waterfront a higher amenity value. The Taxpayer's appraiser states in the appraisal that the Property has an "excellent" view of the lake and mountains. This statement does not support the Taxpayer's argument.

The board has consistently held that auction sales are not typically reliable indicators of market value. The fact that all of the properties in the Piping Rock development sold at auction does not prove that they were purchased at fair market value.

If the taxes have been paid, the amount paid on the value in excess of \$103,400 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

Page 5
Caza v. Town of Wolfeboro
Docket No.: 15743-94PT

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.

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 David Moore, Agent for Lynda L. Caza, Taxpayer; and Chairman, Selectmen of Wolfeboro.

Date: May 21, 1997

0006

Valerie B. Lanigan, Clerk