

Charles E. and Blakeley R. Waite

v.

Town of Thornton

Docket No.: 16564-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$137,500 on a condominium unit in the White Birch Condominiums (the Property). For the reasons stated below, the appeal for abatement is granted to the Town's recommended assessment.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry their burden beyond the assessment recommended by the Town at the hearing.

The Taxpayers argued the assessment was excessive because:

(1) sales of lower-level units in the complex indicate the Property is

overassessed;

(2) a realtor's letter to another condominium owner suggested that condominium sales were infrequent and at reduced values; and

(3) based on an average of the overassessment of the lower-level units that sold, the Property had a market value of \$65,000 to \$70,000.

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The Town recommended a revised assessment of \$132,500 to correct for a \$5,000 lower amenity value. The Town argued the revised assessment was proper because:

(1) the White Birches comparables submitted by the Taxpayers' representative were not truly comparable as they were lower level units and the Property is an upper-level unit;

(2) the White Birches comparables do not have the same view or living area; and

(3) the Snow Wood (an adjacent condominium complex) comparables are of lesser quality and have electric heat as opposed to oil heat for the Property; and

(4) the Town has had a revaluation that should address any inequities.

Board's Rulings

Based on the evidence, the board finds the Town's revised assessment of \$132,500 is reasonable for the following reasons.

The Town's recommended assessment of \$132,500 equates to an approximate \$85,000 estimate of market value by applying the Town 1995 equalization ratio of 1.56 ($\$132,500 \div 1.56$). The board finds the evidence submitted by the Taxpayers' agent did not tip the scale for the board to find a lower estimate of market value.

First, the Taxpayers' agent's (Kathleen Collins) comparison to the sales of the lower units, in and of itself, was not inappropriate as those are the only sales within the Property's complex. However, no adjustments were made for the differences in the desirability between lower level one-story units and the Property as a upper level two-story unit. While the square footages are not significantly different, the desirability of the Property being fully above ground with better views, greater window space, better use of such areas as decks and better access (the lower units, from the photographs, appear to be accessed from the side via a series of steps) is significant compared to the lower level. The board noted upon reviewing the assessment-record cards the initial sales of above-ground units in 1988 versus below-ground units

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showed a \$15,000 to \$25,000 differential at that time. Further, the Town on the assessment-record card recognized the less desirability of the lower level units by applying 10% functional depreciation to the building component. While certainly the market in 1995 may be different from that in 1988, the board finds such gross differences of utility and desirability need to be recognized and adjusted for.

Second, Ms. Collins' comparison of the Property to sales of above-ground units in the Snow Wood condominium complex is appropriate. However, again the differences as testified to by both Ms. Collins and the Town in the quality of the buildings (different developers) and heat (electric versus oil hot water) are issues that need to be adjusted for to arrive at a proper conclusion of value for the Property. Ms. Collins, however, made no adjustments.

Third, Ms. Collins submitted a letter from a realtor, Thomas N. T. Mullen, to an owner of a similar condominium in the Taxpayers' building. The

letter states that a listing price of \$95,000 would be reasonable, would likely solicit offers in the \$80,000 to \$85,000 range and possibly negotiate a sale price of \$90,000. While this is a realtor speculating as to the appropriate listing and marketing range of a similar property, it is some evidence that a major player in the real estate market felt a market value similar to the equalized assessment of \$85,000 was not unreasonable.

If the taxes have been paid, the amount paid on the value in excess of the Town's recommended adjusted assessment of \$132,500 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 Town. 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.

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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 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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kathleen Collins, Agent for Charles E. and Blakeley R. Waite, Taxpayers; and Chairman, Selectmen of Thornton.

Date: June 9, 1997

Valerie B. Lanigan, Clerk

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