

Roger Garland

v.

Town of Francestown

Docket No.: 17780-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$58,500 (land \$10,000; buildings \$48,500) on a condominium (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 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 Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased for \$10,000 in November 1998 and required substantial renovations in order to rent it;
- (2) all condominiums in the complex are substantially the same and are equally assessed;
- (3) the outside of the complex is in disrepair;
- (4) two 1996 sales for \$32,600 and \$29,000 show the Property is overassessed; unit #4 recently

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sold for \$16,700; other units have been on the market and have not sold;

(5) sales prices of the condominiums have dropped since the units were built in the early 1970's as a result of the closure of Crotched Mountain Ski Area;

(6) the Property is rented for \$600 a month; the owner pays \$195 a month in condominium fees, a \$250 yearly special assessment and expects an approximate \$2,000 special assessment to repair the outside of the complex; and

(7) the market value of the Property as of April 1998 was \$17,000.

The Town argued the assessment was proper because:

(1) there are no resident owners of the complex, all of the units are available for rent at \$500 to \$600 a month;

(2) the Town has attempted to follow the board's 1996 ruling of three units in the complex;

(3) the ski area has been foreclosed on but the Town is currently in negotiations with prospective buyers who intend to reopen the ski area on a limited basis; and

(4) the Town has set aside a capital reserve fund of \$50,000 to do an update effective for the year 2000.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$23,500 based on a market value estimate of \$25,000 and the Town's 1998 equalization ratio of 94% ($\$25,000 \times .94$).

All assessments must be proportional to market value and the general level of assessment in the Town. The mere fact that all condominiums in the Taxpayer's complex may be assessed similarly does not establish proportional assessment if those assessments are not related to

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market value. RSA 75:1 and Appeal of Andrews, 136 N.H. 61 (1992). Regardless of the board's finding in earlier 1992 appeals (Robert J. Mullen, Docket No. 12998-92PT, et al.), selectmen have the responsibility to annually review assessments and reestablish proportionality. RSA 75:8. The board recognizes this is a difficult task where, given the nature of the property and the closure of the adjacent ski area, there have been few recent arm's-length transactions to be market value benchmarks.

In arriving at its estimated market value, the board has considered the few sales that have occurred from 1996 to date and has estimated a value by the income approach based on the Taxpayer's testimony (and to some extent confirmation by the Town). The board agrees with the Taxpayer that, due to the localized market conditions, the Property and the other condominiums at Crotched Mountain have likely not increased in value at the same rate as other real estate in Town generally have since 1996. Consequently, the board considered the sales that have occurred from 1996 to date. While two of these sales occurred in 1999 and would not have been available for review during the 1998 tax year, the board finds it is reasonable to at least consider the sales because of the lack of meaningful market activity of the condominiums. The board gives no weight to the Taxpayer's purchase of the Property for \$10,000 as it appears to be significantly below the other sales. As the Taxpayer noted "the owner wanted to get rid of it." The three remaining sales indicate a value range of approximately \$17,000 to \$33,000. This inconsistent market data is also supported by the Town's testimony that an adjacent set of better condominiums have had a disparate range of sale prices.

Because the sales data does not provide a conclusive estimate of market value and because all sixteen condominiums in this association are rented, the board has also estimated a value by the income approach. Based on the parties' testimony, the board has utilized a \$600 a

month gross rent. Vacancy is estimated at 15% taking into account the average vacancy testified to by the Taxpayer tempered by the fact that the Taxpayer has installed a gas central heating. Expenses include the Taxpayer's actual condominium fees of \$195 a month, an annual special assessment of \$250, insurance of \$130 and an estimated reserve for replacement of \$200. Ideally, this reserve for replacement should be inclusive in the monthly condominium fees; however, the Taxpayer indicated that the exterior of the condominiums are in need of repair and painting which may necessitate a one-time \$2,000 special assessment. Consequently, some additional allowance for the apparent lack of reserving funds for periodic capital improvements is necessary. The board has estimated a capitalization rate of 11% taking into account that financing of any mortgage would be as a non-owner-occupied unit and the moderate risk that any owner's equity would be given the Property's history and rental vacancy. Added to the 11% capitalization rate is an approximate 3% effective tax rate to arrive at an overall capitalization rate of 14%. A summary of these calculations and the indicated value follows:

Gross Potential Income	\$ 7,200
Vacancy (-15%)	<u>.85</u>
Effective Gross Income	\$ 6,120
Total Expenses	<u>- 2,920</u>
Net Potential Income	\$ 3,200
Overall Capitalization Rate	<u>.14</u>
Indicated Value	\$22,900

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Considering the value range indicated by the sales and the income approach, the board concludes an estimated market value for the Property of \$25,000 or an assessed value of \$23,500 (\$25,000 x .94).

The board is encouraged by the Town's plan to perform an assessment update for tax year 2000. The facts of this case and the Town's testimony of the time elapsed since the last revaluation indicate there is a need for an overall review of the assessment equity within the Town.

If the taxes have been paid, the amount paid on the value in excess of \$23,500 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 1999. 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 "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

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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

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Roger Garland, Taxpayer; and Chairman, Board of Selectmen of Francestown.

Date: February 2, 2000

Lynn M. Wheeler, Clerk

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