

Zizza Realty Trust

v.

Town of Windham

Docket No.: 20009-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$180,000 on Map 19/A/800/10.6, a residential condominium at 68 Pleasant Street (the “Property”). For the reasons stated below, the appeal for abatement is granted based on market evidence submitted by the Town.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. While the Taxpayer’s arguments did not carry its burden, an abatement is granted based on the Town’s market evidence.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was assessed for the same amount as two other units in the complex which sold for higher prices (\$304,000 and \$318,000, 85 and 91 Pleasant Street, respectively);
- (2) these two units have finished basements and second floors, but the Property does not; and
- (3) a comparison to other properties with substantial land and buildings (shown on Taxpayer Exhibit 1) indicates the Property should be assessed “at no more than \$70,000.”

The Town argued the assessment was proper because:

- (1) the Property was purchased in September, 2002 for \$208,130 and sold at the end of November, 2004 for \$259,000;
- (2) the Taxpayer’s interrogatory answers indicate an estimated market value of \$208,000 as of the April 1, 2003 assessment date;
- (3) the Property is located in “Whispering Winds,” an 80-unit condominium development for mature adults (55 and older) that showed considerable price appreciation, as shown in Municipality Exhibit A;
- (4) time trending the sales data and applying the Town’s 75% “ratio” (level of assessment) “indicates a reasonable assessment range from \$165,000 to \$175,000,” as stated in Municipality Exhibit A;
- (5) each unit had approximately the same size, but some had finished second floors and basements, and the odd-numbered units had walk-out basements (rather than bulkheads) and better views, which helps account for the variations in selling prices, along with the rate of appreciation (0.6% to 1% per month in the relevant period); and
- (6) the Taxpayer did not meet its burden of establishing market value or showing the Town’s assessment was wrong.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$165,000. This is based on a market value estimate of \$220,000 and the Town's level of assessment of 75% as determined by the department of revenue administration's ("DRA") 2003 equalization ratio.

While the Town is technically correct that the Taxpayer did not carry its burden in presenting evidence that the \$180,000 assessment was disproportionate, the board finds evidence in the entire record, primarily focusing on the sales of comparable units as presented by the Town in Municipality Exhibit A, that warrants granting an abatement.

The board finds good evidence of the Property's market value is contained in the array of sales of similar even numbered units (same side of Pleasant Street) that sold in 2002 and early 2003 contained in Municipality Exhibit A. Those sales similar to the Taxpayer's Property indicate an average market value of approximately \$218,000 as of April 1, 2003. That same analysis indicated that the range of sales that occurred between August 2002 and the end of January 2003 was \$203,127 to \$244,811 and that the two sales that occurred in January 2003, closest to the assessment date, had a market value range trended to April 1, 2003 of approximately \$230,000 to \$245,000.

The board also considered the Taxpayer's subsequent sale of the Property in December of 2004 for \$259,000 as an indication of its April 1, 2003 market value. While the sale occurred approximately 20 months after the April 1, 2003 assessment date under consideration, utilizing the various time-adjustment rates contained in the Town's evidence of 0.6% to 1.0% per month provides an indicated market value range of approximately \$216,000 (\$259,000 divided by 1.20) to \$231,000 (\$259,000 divided by 1.12). When a sale is an arm's-length transaction, such as the sale of the Property by the Taxpayer, the sales price is one of the "best indicators of the

property's value." See Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). Based on both the sales of comparable units and the time-trended market value of the Taxpayer's \$259,000 sale, the board arrives at an estimated market value as of April 1, 2003 of \$220,000.

Further, the board finds the Taxpayer's comparison to the two units of 85 and 91 Pleasant Street does not carry its burden for a greater abatement for two reasons. First, those properties, as the Town testified, were under construction in 2003 and therefore were not fully assessed as of that date. Second, those units are on the opposite side of Pleasant Street, have walk-out basements which either are finished off or have the potential to be finished off, and were subsequently assessed at \$201,000 when complete in 2004 (see the Town's "Condo Assessment Review-2004," part of Municipality Exhibit A). Also, the Taxpayer's comparison to single-family homes in the area also does not support a greater abatement. The assessments listed in Taxpayer Exhibit 1 were for prior years, not 2003, and, more importantly, are of properties that are dissimilar in both style and market from the Taxpayer's condominium. The sales-comparison approach to be used effectively in estimating market value must look at sales of property that reflect a similar bundle of rights. Ownership rights for condominium and single-family homes are structured legally differently and provide different use and enjoyment amenities and thus often attract different participants to their respective markets. See Appraisal Institute, The Appraisal of Real Estate, 12th Edition (2001), Chapter 17.

In summary, the board finds both the sales of the comparable units within the Taxpayer's Whispering Winds condominium development and the sale of the Taxpayer's Property in December of 2004 support an estimated market value of \$220,000 on April 1, 2003 which, when equalized by the level of assessment of 75% results in a proportionate assessment of \$165,000.

If the taxes have been paid, the amount paid on the value in excess of \$165,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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(f). 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

Albert F. Shamash, Esq., Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dorina & Robert Zizza, PO Box 211, Yantic, CT 06389; Bernard H. Campbell, Esq., Beaumont & Campbell Prof Ass'n, 1 Stiles Road - Suite 107, Salem, NH 03079, Municipality Representative; and Chairman, Board of Selectmen, Town of Windham, PO Box 120, Windham, NH 03087.

Date: 4/12/06

Anne M. Stelmach, Clerk