F. Sugden Murphy, Jr. Revocable Trust

v.

Town of Rye

Docket No.: 20436-03PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $143,900 on Map 13, Lot 38/3, a condominium (the "Property"). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) several other condominiums in the same condominium complex have received renovations or improvements without any change to their assessments; and

(2) the relative value of the Property and the other units in the complex are disproportionate

based on the respective percentages of ownership of the common area of the various units.

The Town argued the assessment was proper because:

(1) based on an analysis using three comparable sales from the Property's condominium complex the Property is not disproportionately assessed; and

(2) the percentage of ownership of the common area attributed to each condominium has no impact on the market value of the individual condominium units.

Board's Rulings

Based on the evidence, the board finds the Property is not disproportionately assessed.

The Taxpayer's appeal for abatement has a two-pronged basis: 1) the unaccounted for improvements to other units within the same condominium complex; and 2) the relationship between the value of the Property and its percentage of ownership of the common area in the condominium association. The board will address each of these issues individually.

Improvements to other units

The Taxpayer testified several of the other units in the condominium complex have had significant improvements made to them. The Town, however, has not adjusted the assessments of those other units to reflect the additional value of the renovations. The Taxpayer stated this lack of updating of the individual units' assessments has caused the various assessments to be disproportionate when compared to the Property. During the time period that the other units were being renovated and improved, the Property had no renovations or upgrades. The board finds this argument does not carry the Taxpayer's burden to show the Property was disproportionately assessed. There was, however, evidence indicating certain surrounding properties, some other units in the same condominium complex, may have been underassessed.

The underassessment of other properties does not prove the over assessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id. The New Hampshire General Court has determined the property (real estate) tax to be the primary source of revenue for municipalities to fund their public responsibilities and the basis for determining each taxpayer's share of that tax burden as provided in Part I, Article 12 of the New Hampshire Constitution. The legislature has stated all real estate is taxable unless otherwise provided (see RSA 72:6 and RSA 72:7) and such real estate, unless otherwise provided, shall be assessed at market value (see RSA 75:1). The Taxpayer stated he had no knowledge of the Property's market value. The Town provided an analysis, contained in Municipality Exhibit A, comparing the Property with three sales of units from within the same condominium complex in an attempt to estimate the Property's market value. The board finds the Town's analysis to be a reasonable effort to estimate the Property's market value. The Town's market value finding of $213,700 multiplied by the 2003 equalization ratio of 75.2% for the Town, yields an indicated assessment for the Property of $160,700 [$213,700 x .752 = $160,700 (rounded)]. This is some evidence an abatement for the Property is not warranted.

Percentage of Common Area Ownership

The Taxpayer's second argument for an abatement concerns the relative value of the Property based on its percentage of ownership of the common area in the condominium association. The Taxpayer testified the fact the Property has a larger percentage of condominium fee "liability" due to its higher percentage of ownership (16.94% for the Property compared to 8.30% on average for most of the other units) of the common area should be a factor that reduces

the Property's assessment. The board finds to the extent there is an impact on the market value of any condominium in the association based on its percentage of ownership of certain common areas that influence would be reflected in the sale prices of the various units. The Town's analysis of the impact of the apportionment of the common expenses and maintenance of the complex concludes there is no influence on value. As an example, the Town stated that although the individual units have changed in value over the years, as reflected in their sale prices, their percentage of ownership has remained unchanged.

For these reasons, the board finds the Property is not disproportionately assessed and the appeal is therefore denied.

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, <u>not the date this decision is received</u>. 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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: F. Sugden Murphy Jr., PO Box 396, New Castle, NH 03854, Taxpayer's representative; and Chairman, Board of Selectmen, Town of Rye, 10 Central Road, Rye, NH 03870.

Date: 12/30/05

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Melanie J. Ekstrom, Deputy Clerk