

David A. and Mary L. Morton Trust

v.

Town of Carroll

Docket No.: 23443-07PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$367,480 (building only) on Map 211/Lot 006-000-024, a townhouse condominium (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) many of the condominium properties in the Bretton Woods Resort area (“BWR”), which includes the “Rosebrook” group where the Property is located, are sold as furnished units;

(2) the Town based the assessments of the Property and other condominium units located in the BWR on the actual sale prices without any consideration of the value of any personal property (furnishings) associated with each unit thus creating the disproportionate assessment of the Property;

(3) the value of the personal property should have been deducted from the sale price of each of the furnished units to determine the actual selling price of the real estate as shown on the Taxpayers' assessment/sales comparison "Analysis"; and

(4) the Property's assessment should be adjusted downward \$21,000 to account for the value of its furnishings.

The Town argued the assessment was proper because:

(1) in the opinion of two realtors at Bretton Woods Realty, furnishings have a minimal or negligible impact on the value of a condominium in the BWR;

(2) without an appraisal of the Property's furnishings, it is almost impossible to assign them a value;

(3) the Taxpayers were unable to provide documentation of the value of the Property's furnishings during their meeting with the Town;

(4) the Analysis is not based on market data but rather on the Taxpayers' opinion; and

(5) the department of revenue administration ("DRA") PA-34 forms for the two sales which occurred in Rosebrook utilized in the Town's 2007 revaluation indicated the purchasers gave little or no value to the furnishings included in those transfers.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionably assessed.

The Taxpayers based their appeal on the fact most condominium properties which sell in the BWR are sold as furnished units compared to most other properties transferred in the Town which do not have furnishings included in their sale prices. The Taxpayers contend the inclusion of the value of the furnishings in the assessments of the individual condominiums causes their assessments to be disproportionate to the assessments of other properties in the Town. The Taxpayers provided the Analysis which included an estimated value of the personal property for each of the units which sold as “furnished” as well as the adjusted sale price of those units which the Taxpayers assert should be the basis for the assessments. The Taxpayers based the value of the furnishings in each unit on approximately 5% of the individual units’ sale price. The Taxpayers testified the 5% factor was their opinion and was not derived from market data. The board finds these calculations to be unsupported in that there is no evidence from the sales presented or any market data supplied by the Taxpayers that this adjustment is valid and should occur.

In further support of their position, the Taxpayers submitted a list (Taxpayer Exhibit No. 1) of all the personal property and furnishings (titled a “Contents List”) which were included when they purchased their condominium at #24 Rosebrook in July 2002. The board notes, however, that although the list is extensive, there are no values associated with the items, either individually or in aggregate. Further, the board researched the PA-34 form signed and filed by the Taxpayers with DRA on July 29, 2002. In answer to specific questions on the PA-34, the Taxpayers stated the following: were there special circumstances in the transfer which suggest that the full price or consideration of the property was either more or less than its market value? “No”; did this sale transfer 100% interest in the property? “Yes”; did the sale price listed above include a consideration for non-taxable personal property? “No”; do you consider the selling price to be fair market value for the property? “Yes”.

The Town's contracted assessor stated that in all the towns where it provided assessing services, the value of any furnishings in condominiums that transferred with personal property included was not accounted for or separated from the value of the real estate. The Town further discussed the impact on market value of furnishings associated with sales of condominium units with two realtors involved in condominium sales in the BWR. It was the realtors' opinion that furnishings have a minimal or negligible impact on the overall value of the condominium.

Additionally, the Town submitted the PA-34 forms for the two sales that occurred in the Rosebrook area during the period from April 1, 2005 to April 1, 2007. This was the timeframe the Town utilized to gather property sales to be used during the Town's 2007 revaluation.

Although both of these sales sold as furnished units, one form indicated no consideration was included for the nontaxable personal property and the other form indicated a nominal value of \$1,000 for "furnishings" was included. The board finds the information on these forms lends credence to the Town's position and the opinion of the realtors that any consideration given for the value of the furnishings associated with the transfer of a condominium unit in the BWR is nominal and/or undeterminable and is consistent with the PA-34 form completed by the Taxpayers in 2002.

"In an abatement case, the Taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town." Appeal of Sokolow, 137 N.H. 642, 643 (1993). This burden can be carried by establishing that the Taxpayer's Property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 367, 368 (2003). Therefore, the board finds the Taxpayers have not carried their burden of proof to show the Property is disproportionately assessed compared to its market value and the appeal is 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, 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(g). 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David A. and Mary L. Morton, Trustees, PO Box 322, West Boxford, MA 01885, representatives for the Taxpayer; Chairman, Board of Selectmen, Town of Carroll, PO Box 146, Twin Mountain, NH 03595; and Commerford Nieder Perkins, LLC, 556 Pembroke Street, Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: September 10, 2009

Anne M. Stelmach, Clerk