

Karl and Paulette Johnson

v.

Town of Carroll

Docket No.: 24176-08PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$608,820 (building only) on Map 211/Lot 008-000-019, a residential condominium (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the quality of the finish in the basement area is inferior to that of the first floor living area and the Town inappropriately valued the two areas equally;

- (2) the Property is not a “slope-side” condominium, is below road grade, does not have any significant view, and has approximately a quarter mile walk to get to the ski slopes, making it less desirable to sell or rent;
- (3) the sale of a property at 72 Forest Lane (Unit 25), on the same street as the Property, for \$410,000 in November 2008, provides, after some appropriate adjustments, a reasonable estimate of the Property’s market value; and
- (4) the Property’s market value was approximately \$460,000 on April 1, 2008.

The Town argued the assessment should be revised to \$550,000 and the revised assessment was proper because:

- (1) it is questionable that the sale at 72 Forest Lane was an arm’s-length transaction and, therefore, its selling price is not a good indication of the Property’s market value; and
- (2) the Property’s market value can be better estimated by trending some sales of other condominiums which occurred both before and after the April 1, 2008 effective assessment date.

The parties stipulated the level of assessment in the Town for the 2008 tax year was the 102.4% median ratio determined by the department of revenue administration.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$500,000.

To determine whether a tax abatement is warranted, the board considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it”). Further, “judgment is the touchstone” in a tax abatement appeal See,

e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994). Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979).

The board finds there is scant market data of comparable properties to assist the parties or the board to definitively determine an accurate market value for the Property. As a consequence, the board has used its best judgment in analyzing the limited market data submitted to determine the proper assessment.

The Taxpayers asserted the best indication of the Property's market value on April 1, 2008 is found by using the November 12, 2008 sale, with some adjustments, of the 72 Forest Lane condominium, located in the same Forest Cottages condominium complex as the Property, which sold for \$410,000. In order to estimate the Property's market value using this sale, the Taxpayers testified its selling price should be trended for changes in market conditions (time) from the November selling date back to April 1, the effective assessment date. According to the Taxpayers, this trending results in a value of \$428,000. Next, the Taxpayers testified this sale should be adjusted to account for the fact that it was essentially a single level unit with two bedrooms because the basement and loft areas were unfinished. The Taxpayers estimated the costs to finish the basement and loft areas to be \$12,000 and \$20,000, respectively. Based on the Taxpayers' testimony, combining these three numbers yields a suggested a market value for the Property of \$460,000, which should be used to determine a revised assessment.

While both parties agreed the sale at 72 Forest Lane was the only sale of a non slope-side condominium in the Property's development in 2008, they disagreed, however, on the validity of this sale as an arm's-length transaction. During the Town's presentation, its representative, Mr. Philip Bodwell, indicated the sale of 72 Forest Lane for \$410,000 should not be considered an arm's-length transaction because, according to the realtors involved, this transaction involved an unusually motivated seller (Municipality Exhibit A, p. 2). Further, the Town, in Municipality Exhibit A at page 4, stated a more accurate cost to finish the basement and loft areas was \$150,000 based on conversations with "sources" at Bretton Woods. Given the questions regarding the arm's-length nature of this one sale as well as the substantially different estimates to finish the basement and loft areas, the board finds the sale at 72 Forrest Lane does not provide a reliable estimate of the Property's market value.

The Town testified the best estimate of the Property's market value could be calculated by comparing the Property to four condominiums which had transferred. Two of these sales occurred before the effective assessment date of April 1, 2008 and two sales occurred subsequent to that date. The Town adjusted the selling prices of each of these four sales for market conditions and determined the Property's April 1, 2008 market value to be \$550,000.

For several reasons, the board finds the Town's brief analysis does not provide probative evidence of the Property's market value. Upon questioning by the board and the Taxpayers' representative, the Town acknowledged one of the sales, Map 211/Lot 007-000-053, was not an arm's-length transaction as it was part of a straight swap of this unit for another between atypically motivated parties and was never exposed to the open real estate market. When this sale is removed from the Town's analysis and the market values of the three remaining sales are

averaged, the indicated value reduces from \$550,000 to approximately \$524,000. The Town concurred that this further reduction would be warranted if the sale of Unit #53 is not included.

After a thorough review of the parties' evidence and testimony, the board finds the proper assessment to be \$500,000. As previously stated, there is a paucity of verifiable market data to enable a definitive determination of the Property's market value. There was conflicting testimony regarding the magnitude of the adjustments necessary to the Taxpayers' comparable sale at 72 Forest Lane. On the other hand, the Town made only a singular adjustment for market conditions to the sales it utilized. There was no discussion about dissimilarities between the sales and the Property such as their relative proximity to the ski slopes, a comparison of their views or siting relative to road grade. The board heard testimony the Property sits below road grade, does not have a view of Mount Washington, has a lower quality and smaller amount of finished basement area than other similar units and has some deferred maintenance showing some water staining.

The board's finding of \$500,000 as the proper assessment for the Property is a reconciliation of all the evidence and testimony noted above with the board's experience and judgment.

If the taxes have been paid, the amount paid on the value in excess of \$500,000 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.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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 with a copy provided to the board in accordance with Supreme Court Rule 10(8).

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 this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayers; 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: January 27, 2011

Anne M. Stelmach, Clerk