

Nancy B. Roberts

v.

Town of Rye

Docket No. 5897-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$128,000 (land, \$96,150; buildings, \$31,850) on Unit #1, consisting of a condominium unit at Cedar Ledge Condominiums on Ocean Boulevard (the Property). The Taxpayer failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayer was not defaulted. This decision is based on the evidence presented to the board. 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 an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

We find the Taxpayer carried this burden and proved she was disproportionately taxed.

The Taxpayer argued in her written submittal that the assessment was excessive because:

- 1) the Property is assessed far higher than the market value;
- 2) an appraisal by David I. Checkoway, Realtor, of a similar unit dated March 10, 1989, was appraised at a fair market value of \$100,000;
- 3) units at Cedar Ledge have remained on the market unsold for over three years and Unit 3 sold in the fall of 1989 for \$96,000 and was assessed for \$126,200;
- 4) the value of the Property is further diminished by the condition on the north side known as Rye on the Rocks; and

5) land of similar properties is assessed per square foot lower than the subject.

The Town testified that an adjustment has been made in 1990 based on a study of all condominium units in the Town of Rye in which sales from 1987 through 1990 were used. Based on that study, the Town reviewed all of the sales for 1988 and 1989 and arrived at a recommended assessment of the property in the amount of \$93,450. The Town argued that the recommended assessment is fair and equitable based on the study performed.

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the taxpayer[s] paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

Based on the evidence we find the correct assessment should be \$93,450. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.) We note that in making a judgment of the proper assessment, the value of the entire property, i.e., land and building, must be established.

If the taxes have been paid, the amount paid on the value in excess of \$93,450 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Nancy B. Roberts, taxpayer; and the Chairman, Selectmen of Rye.

Melanie J. Ekstrom, Deputy Clerk

Date: March 4, 1992

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