

**Shaines & McEachern Real Estate Partnership**

**v.**

**City of Portsmouth**

**Docket No.: 5988-89**

**DECISION**

The "Taxpayer" appealed, pursuant to RSA 76:16-a, the "City's" original 1989 assessment of \$715,400 on a 11,023.77 square-foot lot with a 2-story commercial building (the Property). The City abated the assessment to \$615,400 (land \$148,800; building \$466,600). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) a 1989 appraisal estimated a \$1,300,000 value; and
- (2) the \$1,300,000 value when equalized by 44% (sic) shows a \$572,000 assessment.

The City argued the assessment was proper because:

- (1) the assessment was reduced to \$615,400 in November 1989;

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(2) this adjusted assessment when equalized by the proper 1989 ratio (47%) results in a \$1,309,360; and

(3) the equalized value is almost exactly the \$1,300,000 estimated by the Taxpayer's appraisal.

**Board's Rulings**

We find the Taxpayer failed to prove the Property's assessment was disproportional. The adjusted assessment is consistent with the Taxpayer's appraisal, and no further adjustment was requested or is warranted.

The board is authorized to award costs as in the superior court. RSA 71-B:9; TAX 201.05(c). Cost are awarded where an appeal was frivolously filed or maintained. We find the Taxpayer's appeal was frivolously maintained. There was absolutely no reason for a hearing. The City had already abated the assessment to a value consistent with the Taxpayer's appraisal. The Taxpayer should have withdrawn this appeal rather than requiring the City and the board to conduct a hearing without the Taxpayer. The City's representative testified his total hearing and travel time was 2 1/2 to 3 hours with 96 miles of travel. Therefore, pursuant to RSA 71-B:9, the Taxpayer is ordered to pay the City \$116.32 for costs and mileage incurred in prosecuting this frivolously maintained appeal.

The Taxpayer shall pay the City this \$116.32 within 10 days of the clerk's date below, sending a copy of the payment letter to the board. If

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Taxpayer fails to so comply, the City may file an enforcement motion with the board, and then the board may file an enforcement action in the Merrimack County Superior Court.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John H. McEachern, Esq., Representative for the Taxpayer; and Chairman, Board of Assessors of Portsmouth.

Dated: October 26, 1992

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Valerie B. Lanigan, Clerk

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