

Elaine I. McManus

v.

Town of Bartlett

Docket No.: 6077-89

### **DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$156,950 on a property with a 10,000 square-foot commercial building and a house. 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 disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the valuation on the commercial building was excessive (The Taxpayer submitted a report to support her assertion that the commercial building with appurtenant land should be assessed for \$36,250.); and
- (2) the Town has used an incorrect acreage.

The Town argued the assessment was correct because it was arrived at using the same cost manual used in the revaluation. The Town submitted a memorandum discussing its position.

The board fully reviewed both the Taxpayer's and the Town's evidence and checked the parties' costs for the commercial building with the Marshall & Swift manual. We find the Taxpayer's evidence demonstrated the commercial property was overassessed. The focal issue is whether the commercial building had a 1989 replacement cost of \$171,850 (Town) or \$97,078 (Taxpayer). We find the building to be appropriately valued at \$97,078.

We also find the Taxpayer's evidence on the land credible. The total parcel is 14.1 acres with 10.6 acres in current use and 3.5 acres split between the commercial building and the house.

Therefore, we find the following assessment:

CU land 10.6 acres	\$382
NICU land 3.5 acres	25,690
Commercial building	44,655
Residential building	56,650
Barn	<u>500</u>
	\$127,877

If the taxes have been paid, the amount paid on the value in excess of \$127,877 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
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 Elaine I. McManus, taxpayer; and the Chairman, Selectmen of Bartlett.

Dated: April 24, 1992

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Valerie B. Lanigan, Clerk

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v.

Town of Bartlett

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**ORDER**

This order relates to the Town's rehearing motion and the Taxpayer's rehearing motion. For the reasons stated below, the Town's motion is denied, and the Taxpayer's motion is denied.

**Town's Motion**

The Town failed to state any "good reason," RSA 541:3, to grant the motion. The Town basically argued the board erred by relying on the Marshall & Swift Valuation Service when the Town used the manual prepared by E. F. Green. The Town asserted the board's use of Marshall & Swift has resulted in the under assessment of this common property in relation to other commercial properties that were assessed using the Green manual. The board disagrees.

The starting point for all assessments is the market. See RSA 75:1. Therefore, whatever methodology is used must reflect the market. The cost approach is considered an acceptable methodology for appraising common properties because of the principle of substitution. The board concluded given (1) the Taxpayer's evidence and (2) the board's technical knowledge, See RSA 541-A:18, v(b), that the Town's cost approach, as applied to the Property, was flawed. Perhaps the Green manual is flawed or perhaps the assessors failed to use adequate judgment or failed to use the manual correctly. Whatever the reason, the Property's assessment was excessive and required adjustments. Thus, given the divergent cost estimates, the board turned to Marshall & Swift, a nationally recognized

valuation service, to assist the

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board in giving weight to the conflicting estimates of value. Moreover, the board's initial judgment was that the Town's replacement cost was excessive.

The Town's argument that all commercial property was similarly assessed and now the Property is proportionally underassessed compared to other commercial properties. The question is not proportionality within a class of properties but proportionality within an entire Town. Appeal of Sunapee, 126 N.H. 214, 219 (1985).

Taxpayer's Motion

The Taxpayer asserted the board incorrectly calculated the land not in current use (NICU). The board reviewed the land calculation and agrees. The NICU land should be \$21,750. Therefore, the total assessment should be \$123,940. If the taxes have been paid, the amount paid on the value in excess of \$123,940 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.  
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Eileen I. McManus, Taxpayer; and Chairman, Selectmen of Bartlett.

Dated: June 1, 1992  
Valerie B. Lanigan, Clerk

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