

Gerald E. Goodwin

v.

Town of Franklin

Docket No.: 6200-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$369,000 (land, \$109,900; buildings, \$259,100) on a three-story commercial building on 7,140 square feet of land on Central Street (the Property). 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 for the following reasons.

(1) This is a three-story brick building. The first floor is used by a retail pharmacy and Hallmark Card Shop. The second floor has seven apartments and an area used as a meeting room by the Grange. The third floor at one time was used by the Odd Fellows as their meeting place but

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is now vacant. The third floor cannot be renovated to apartments because there is no parking available.

(2) The Tenants are all lower income, and the apartments are subsidized.

There is always at least one apartment vacant because it is difficult to rent second floor apartments without parking, especially to the elderly.

(3) The Property was placed on the market by New Hampshire Business Sales, Inc. in April, 1989 at \$280,000, and subsequently dropped to \$260,000. The Property was on the market for two years, with 36 showings, but no one was interested.

(4) The building is realistically priced at \$260,000 based on its present income.

The City argued the assessment was proper because:

(1) five comparable properties, all within one-half mile of the subject and sold in 1988, indicate the Property has a value per square foot of leasable area of \$29.01 based on an effective area of 12,720 square feet;

(2) the third floor and the basement were not included in the sales analysis;

(3) the Taxpayer's income analysis supports the range arrived at by the City;

(4) in the City's cost approach, a 21 percent adjustment was made to the Property for any functional problems caused by the layout of the Property; and

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(5) the assessment is fair.

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Based on the evidence, we find the correct assessment should be \$295,200. 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 City shall make this allocation in accordance with its assessing practices.) This assessment is ordered for the following reasons.

(1)The Taxpayer's evidence that a realtor was actively marketing the Property for \$280,000 with no offers is credible evidence that the \$369,000 assessment was excessive.

(2)The building consists of at least 7,260 square feet (2nd floor - 30 x 30 = 900 square feet; 3rd floor - 6,360 square feet) that cannot be rented without City approvals, and the approval would probably not be given due to the lack of on-site parking. In addition to no marketability, the vacant unusable space is a detriment because some upkeep must be made to protect the rest of the building.

(3)The City's comparables demonstrated what the Franklin commercial/apartment market was like. Because of the market perception of the City's downtown, there would probably not be a proportional increase in value as a building gets larger. The market and the income simply would not

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support it.

(4)The functional depreciation (21%) was insufficient. Even when compared to the City's comparables and the functional depreciation they received.

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Therefore, the board further reduced the value by 20%, arriving at an assessment of \$295,200.

(5)The real issue here is judgment. 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). The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b). The board's judgment is that given the building's outdated size, the unrentable space, the Taxpayer's marketing efforts, the assessment was excessive.

If the taxes have been paid, the amount paid on the value in excess of \$295,200 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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gerald E. Goodwin, Taxpayer; and Chairman, Board of

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Assessors of Franklin.

Dated: August 7, 1992

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Valerie B. Lanigan, Clerk