

Robert Pierce

v.

City of Manchester

Docket No.: 6631-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1989 assessment of \$164,680 (land, \$35,350; buildings, \$129,330) on a 48,351 square foot lot with a factory building (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 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 that the Property, a warehouse/manufacturing building, purchased in August, 1985 for \$350,000, is overvalued due to an excessive assessment that is higher than market value.

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The City argued the assessment was proper because:

- (1) this is a typical butler type building and the assessment has not been changed since a 6,000 square foot addition to the Property in 1975;
- (2) the cost approach is used to calculate the per square foot costs for assessment purposes on metal buildings;
- (3) the assessment was arrived at using the same methodology arrived at on other similar type properties; and
- (4) there is no inequity and several attempts were made to contact the Taxpayer to discuss the case, but the Taxpayer never responded to telephone or written communications.

Board's Rulings

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the City supported the Property's assessment. The City testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the City. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been

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compared to the Property's assessment and the level of assessments generally in the City. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The board is authorized to award costs as in the superior court. RSA 71-B:9; TAX 201.05(c). Costs are awarded where an appeal was frivolously filed or maintained. We find the Taxpayer's appeal was frivolously maintained. The appeal was filed with the Board of Tax and Land Appeals by Robert Banks, Taxpayer's agent, on April 24, 1990. On June 7, 1990, an information sheet was returned to the Board with the date of purchase, size and a sketch of the Property. On September 21, 1992, a letter was received from Mr. Robert Banks indicating that he was no longer providing representation to the Taxpayer and all future correspondence should be sent to the Taxpayer direct. The Taxpayer never made any contact with this Board, either to submit any arguments or supporting documents to defend his appeal or to notify the Board that he would not be attending the February 11, 1993 hearing. The City testified that they made numerous attempts to contact the Taxpayer to resolve the matter. Several messages were left on the Taxpayer's telephone answering machine requesting that he contact the City and a letter dated January 7, 1993 was sent by Paul Porter, Jr., Assessor, requesting that the Taxpayer contact him in order to discuss the disposition of the case prior

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to the hearing date. The Taxpayer never responded to any of the City's requests.

Therefore, pursuant to RSA 71-B:9, the Taxpayer is ordered to pay the City \$108.30 for costs incurred in prosecuting this frivolously maintained appeal. These costs cover expenses and witness fees for the hearing day. The Taxpayer shall pay the City this \$108.30 within 10 days of the clerk's date below, sending a copy of the payment letter to the board. If the 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert Pierce, Taxpayer; and Chairman, Board of Assessors of Manchester.

Dated: March 1, 1993

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Valerie B. Lanigan, Clerk

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