

David J. Locke and Matthew Locke

v.

City of Franklin

Docket No.: 6676-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1989 assessment of \$256,200 (land, \$71,600; buildings, \$184,600) on their real estate at 142 North Main Street, consisting of a 5,852 square-foot lot with a three-story brick apartment building (9 units of which 2 units cannot be occupied) (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was listed for \$239,900;
- (2) they purchased the Property from Belknap Bank & Trust in November, 1989 for \$162,500 at foreclosure;

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(3) Belknap Bank & Trust had an appraisal done by Armstrong Appraisal Associates, Inc. in September of 1989 which estimated its market value at \$230,000; and

(4) the Property's 1990 income and expenses do not support the assessed value.

The City agreed the land value needed to be adjusted because of the two unusable apartments. The City argued the adjusted assessment was proper because:

(1) it was based on sales data of comparable properties with adequate adjustments made to reflect the Property's value; and

(2) the same methodology was used for these types of properties.

Based on the evidence, we find the correct assessment should be \$227,200 (land \$56,000 and building \$171,200). This assessment is ordered because of the following.

The two unusable units cannot be considered substantial value enhancements. Thus, we agree with the City's land adjustment, but we conclude an additional 4% depreciation should be added to the building because of this problem. The Taxpayers' insistence on a \$162,500 assessment is unwarranted. A foreclosure sale is not, in this case, the market value. See City's comparables and bank appraisal.

If the taxes have been paid, the amount paid on the value in excess of \$227,200 shall be refunded with interest at six percent per annum from date

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paid to refund date. RSA 76:17-a.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David J. Locke and Matthew Locke, Taxpayers; Chairman, Board of Assessors of Franklin; and Scott Bartlett, MMC.

Dated: July 27, 1992

Valerie B. Lanigan, Clerk

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