

Lemieux Gravel & Sangermano Partnership

v.

Town of Greenville

Docket No. 6682-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$866,100 (land, \$231,400; buildings, \$634,700) on Pleasant Street, consisting of three buildings comprising an 18 unit apartment building complex (the Property). The Town failed to appear, but consistent with our Rule, TAX 102.03(g), the Town was not defaulted. This decision is based on the evidence presented to the board. The first issue heard by the Board was the question of timely filing of a written appeal with the Town. The Board ruled the Taxpayers application was timely filed with the Town. 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 they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because:

1) the Property is an eighteen unit apartment development, three buildings of six units each;

2) the buildings were constructed in 1987;

3) for calendar year 1987, the Property had an 11 percent vacancy rate and gross receipts of \$130,283 and for calendar year 1988, the Property had a 16.7 percent vacancy rate and gross receipts of \$111,277;

4) based on an income capitalization approach, a fair and just assessment is \$647,000; and

5) the Town has reassessed the Property at \$647,100 for tax year 1990.

The Town failed to appear at the hearing or present any written evidence.

The board's inspector inspected the Property, reviewed the property tax cards for tax years 1989 and 1990 and confirmed that the land assessment has been reduced in 1990.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be \$647,300 (land, \$12,600 and building \$634,700). If the taxes have been paid, the amount paid on the value in excess of \$647,300 shall be refunded with interest at six percent per annum from date paid to refund date.

The board must comment on the Town's failure to appear and failure to submit any documents whatsoever to support the assessment. The board must review individual property assessments within the context of the assessments generally in the Town. The board cannot do this if the Town does not appear or submit supporting material. Additionally, all of the Taxpayers from the Town who appeared at the hearing testified the Town had had minimal or no contact with them during the process. This dereliction has hopefully stopped, given the mandate in RSA 76:16 II that requires towns to review assessments, which became effective last year.

This board may also award costs as in the superior court. RSA 71-B:9; TAX 201.05(c). Based on the Town's failure as discussed above, the Board orders the Town to pay the Taxpayers filing fee of \$40.00.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Member

Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Silas Little, Esq., counsel for Lemieux Gravel & Sangermano Partnership; taxpayers; and the Chairman, Selectmen of Greenville, taxpayer.

Melanie J. Ekstrom, Deputy Clerk

Date: March 4, 1992

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