

TC Development Corp.

v.

Town of Swanzey

Docket No.: 6704-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the following 1989 assessments on airplane hangers.

Map & Lot #Assessment

37/36T1\$35,900  
37/36T2\$18,900  
37/36T3\$18,900  
37/36T4\$18,900  
37/36T7\$18,900  
37/36T8\$18,900  
37/36T9\$18,900  
37/36T19\$18,900  
37/36T20\$35,900

For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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.

T.C. Development Corp.

v.

Town of Swanzey

Docket No. 6704-89

Page 2

The Taxpayer argued the assessments were excessive because:

- (1) the land beneath the building is owned by the City of Keene and leased to the Taxpayer;
- (2) despite the end hangers being larger because of the building's configuration, they cannot hold any larger planes, and yet their assessments were substantially higher than the assessments on the regular hangers; and
- (3) adjacent comparable hexagon hangers, in a better location, were assessed at cold storage rates resulting in lower assessments.

The "Town" argued the assessments were proper because:

- (1) they were supported by the hanger sales; and
- (2) the hexagon hangers had lower assessments because they are older and received depreciation and because the assessments were arrived at through settlement.

**Board's Rulings**

Based on the evidence, we find the correct assessment should be as follows.

<u>Map &amp; Lot #</u>	<u>Assessment</u>
37/36T1	\$21,550
37/36T2	\$17,900
37/36T3	\$17,900
37/36T4	\$17,900
37/36T7	\$17,900

T.C. Development Corp.

v.

Town of Swanzey

Docket No. 6704-89

Page 3

37/36T8\$17,900

37/36T9\$17,900

37/36T19\$17,900

37/36T20\$21,550

T.C. Development Corp.

v.

Town of Swanzey

Docket No. 6704-89

Page 4

These assessments are ordered because:

- 1) the 1989 sales of hangers in the Taxpayer's building for \$25,900 is the best evidence of market value for the middle units under appeal;
- 2) the Town's 5% adjustment in 1990 for all the hangers held in one ownership by the Taxpayer is the best evidence presented as to any quantity discount warranted for the Property;
- 3) the end units have only marginally more utility than the middle units due to their configuration;
- 4) the testimony by the Taxpayers that the end units would sell for only \$3,000 to \$5,000 more was the only market data as to the added value of end units and
- 5) based upon the above, the value of the end units should be reduced by 40% (-35% for utility and size and -5% for multi-unit ownership), resulting in their proper assessment of \$21,550.
- 6) no further abatement is warranted due to the hexagon hangers being assessed a lower value since there was evidence that those units may in fact be underassessed; the underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to

T.C. Development Corp.

v.

Town of Swanzey

Docket No. 6704-89

Page 5

conform with the shortness of the yardsticks of the other two tailors in town  
rather than having

T.C. Development Corp.

v.

Town of Swanzey

Docket No. 6704-89

Page 6

them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

If the taxes have been paid, the amount paid on the value in excess of the values listed above 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

---

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 T.C. Development Corp., Taxpayer; and Chairman, Selectmen of Swanzey.

Dated: December 24, 1992

---

Valerie B. Lanigan, Clerk

T.C. Development Corp.

v.

Town of Swanzey

Docket No. 6704-89

Page 7

0008