

John M. Hawthorne

v.

Town of Derry

Docket No.: 6950-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$200,100 (land, \$80,600; buildings, \$119,500) on a 6-unit apartment 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 the assessment was excessive because: "Assessment is in excess of a just and proportionate share. The assessed value is far in excess of market value, as well as in excess of value based upon income analysis method."

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The Town submitted an appraisal report which included estimates of value by the cost, income and market approaches and an assessment comparison of comparable properties. The Town argued the assessment was proper because it was supported by the report and on a per-unit basis it is on the low end.

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry his burden, the Taxpayer must make a showing of the Property's fair market value. This value will then be compared to the Property's assessment and the level of assessments generally in the Town. 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). Cost are awarded where an appeal was frivolously filed or maintained. We find the Taxpayer's appeal was frivolously filed and maintained. The Taxpayer did not submit any additional arguments or any supporting documents. The board takes official notice, pursuant to RSA 541:18 V(a)(2), of the Town's prior testimony concerning costs in prosecuting an appeal (estimated at \$250.00). Therefore, pursuant to RSA 71-B:9, the Taxpayer is ordered to pay the Town \$50.00 for costs incurred in prosecuting

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this frivolously maintained appeal. These costs cover expenses and witness fees for the hearing day. The Taxpayer shall pay the Town this \$50.00 within 10 days of the clerk's date below, sending a copy of the payment letter to the

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board. If the Taxpayer fails to so comply, the Town 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

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John M. Hawthorne, taxpayer; and Chairman, Selectmen of Derry.

Dated: June 26, 1992

Valerie B. Lanigan, Clerk

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