

Jeffrey White

v.

Town of Derry

Docket No.: 6961-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$448,500 (land, \$64,900; buildings, \$383,600) on two buildings - a front building with a pizza parlor and three, 1-bedroom apartments and a back building with four, 2-bedroom apartments and one, 1-bedroom apartment (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) a tenant misstated the rent to the assessor;
- (2) the 2-bedroom apartments rented for \$525-\$550 with heat and hot water;

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- (3) the 1-bedroom apartments rented for \$400-\$425, some with various utilities;
- (4) the pizza parlor rented for \$900;
- (5) the 1986 \$425,000 purchase price was inflated; and
- (6) Property's value should be \$325,000-\$350,000 as supported by a July 1990 \$300,000 bank appraisal.

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:

- (1) it knew the tenant had overstated the rent;
- (2) the expenses and capitalization-rate were taken from the market;
- (3) the Town's report supported it; and
- (4) the Taxpayer's report was too limited and the capitalization-rate analysis was incomplete.

Based on the evidence, we find the correct assessment should be \$410,140 (land \$64,900 and building \$345,240). This assessment is ordered because the board struggled with the wide variance between the Taxpayer's appraisal (even when adjusted) and the Town's assessment. This is certainly a somewhat lower quality property. Given the divergent evidence, the board reviewed the evidence and applied its judgment, resulting in reducing the building

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assessment by 10%. Because it is the Taxpayer's burden, we chose a conservative adjustment.

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The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the taxpayer paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

If the taxes have been paid, the amount paid on the value in excess of \$410,140 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

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 Jeffrey White, taxpayer; and Chairman, Selectmen of Derry.

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Dated: June 26, 1992

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Valerie B. Lanigan, Clerk

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