

Bernard N. and Janet L. Colby

v.

Town of Derry

Docket No.: 7060-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$375,100 (land, \$111,000; buildings, \$264,100) on a 12-unit apartment building (the Property). A Taxpayer was present at the call of the list, but he did not remain for the hearing. Consistent with our Rule, TAX 102.03(g), the Taxpayers were 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 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 failed to carry this burden.

The Taxpayers argued, in their written submittals, the assessment was excessive because:

(1) it did not include consideration of capital reserves and expenses;

Bernard N. and Janet L. Colby

v. Town of Derry

Docket No.: 7060-89

Page 2

- (2) the market has dropped;
- (3) comparable properties were asking \$240,000 to \$275,000 in 1989; and
- (4) the Property did not place significant demands on Town services, including schools.

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 was supported by the report;
- (2) it was assessed consistently with other properties in the Town;
- (3) capital expenditures and reserves are not considered a line item in the income approach; and
- (4) the Property was assessed at one of the lowest per-unit assessments.

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

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers 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

Bernard N. and Janet L. Colby

v. Town of Derry

Docket No.: 7060-89

Page 3

of Town of Sunapee, 126 N.H. at 217-18.

Bernard N. and Janet L. Colby

v. Town of Derry

Docket No.: 7060-89

Page 4

Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

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 Bernard N. and Janet L. Colby, taxpayers; and Chairman, Selectmen of Derry.

Dated: June 26, 1992

Valerie B. Lanigan, Clerk

0007