

Chester R. Briggs

v.

Town of Pittsfield

Docket No.: 7331-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$239,500 (land, \$41,700; buildings, \$197,800) on a .35 acre lot with a 2-story, 7-unit apartment building (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) the apartments in the el are quite small;
- (2) the house has only 4 inch insulation in the attic in the front part;
- (3) some of the roofs and chimneys need to be replaced or repaired;
- (4) the house has a very small basement area;

- (5) the parking area is limited;
- (6) winter maintenance is difficult and expensive owing to narrow access to the rear of the building and the constricted nature of the parking area;
- (7) there is usually one apartment vacant, and there is a collection problem on those that are rented;
- (8) a nearby four unit building, the Nolfo property, sold in 1989 for \$109,000;
- (9) the Taxpayer purchased the Property in 1987 for \$85,000;
- (10) the Taxpayer improved the el and listed the Property in 1990 for \$150,000; and
- (11) the Taxpayer's four comparables are assessed at a lower square foot basis than the Taxpayer's Property.

The Town argued the assessment was proper because:

- (1) the Provencher sale in February 1989 for \$200,000 is the best comparable to the Taxpayer's Property;
- (2) the Provencher sale indicates a gross rent multiplier of 5.35 which if applied to the Taxpayer's Property indicates a market value of \$211,000; and
- (3) the other Taxpayer's comparables are not really comparable due either to size, zoning or use.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$205,700 (land \$37,500 and building \$168,200). This assessment is ordered because:

(1) The town made no adjustment to reflect the fact that the taxpayer included heat and electricity in the rent for his units while the comparable rental units used by the town did not include those items of expense as part of the rent payments charged.

(2) the apartment building should receive an additional 10 percent depreciation to account for the parking limitations, small basement area, partial insulation, electric heat, the size and utility of the units in the barn area and the fact that the owner pays for most of the utilities; and

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(3) the land value should be reduced by 10 percent for the parking and snow removal problems.

If the taxes have been paid, the amount paid on the value in excess of \$205,700 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

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Chester R. Briggs, Taxpayer; and Chairman, Selectmen of Pittsfield.

Dated: December 11, 1992

Valerie B. Lanigan, Clerk

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ORDER

The Board of Tax and Land Appeals received a motion for rehearing/reconsideration dated December 29, 1992 from the Town of Pittsfield in the above captioned matter.

The Town cites four items identified as taxpayer arguments with which they take issue.

The Board refers the Town to page 2, Board's Rulings, for the basis of the Board's decision.

Appropriate weight is given to both the taxpayer and town arguments. Owing to time constraints, the Board does not respond to every argument advanced by the parties specifically in its decision.

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In reviewing the half-hour tape recording of this hearing we find that the Board substantially addressed the issues which the Town raises by questions directed to both parties.

The Town's motion for rehearing/reconsideration is therefore denied.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Chester R. Briggs, Taxpayer; and Chairman, Selectmen of Pittsfield.

Dated: January 29, 1993
Valerie B. Lanigan, Clerk

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