

Charles Kalil and Brenda Kalil

v.

Town of Bartlett

DECISION

Docket Nos.: 7426-89 and 8155-90

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessment of \$44,100 (land, \$22,100; buildings, \$22,000) on a 2,000 square-foot, storage building on 42 acres (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because the building assessment was not in line with the actual costs or with the Marshall and Swift replacement costs.

The Town argued the assessment was proper because it was arrived at using the same cost manual as used throughout the Town

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Based on the evidence, we find the correct assessment should be \$34,100 (land \$22,100 and building \$12,000). This assessment is ordered because:

- (1) the board reviewed several possible types of buildings in Marshall and Swift, indicating a range of approximately \$26,000 (full value 1989);
- (2) the Taxpayers' actual costs; and
- (3) the age of the Town's costs manual.

If the taxes have been paid, the amount paid on the value in excess of \$34,100 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 Gary M. Stern, Representative for the Taxpayers; and Chairman, Selectmen of Bartlett.

Dated: April 21, 1992

Valerie B. Lanigan, Clerk

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ORDER

This order relates to the Town's rehearing motion. For the reasons stated below, the Town's motion is denied.

Town's Motion

The Town failed to state any "good reason," RSA 541:3, to grant the motion. The Town basically argued the board erred by relying on the Marshall & Swift Valuation Service when the Town used the manual prepared by E. F. Green. The Town asserted the board's use of Marshall & Swift has resulted in the under assessment of this common property in relation to other commercial properties that were assessed using the Green manual. The board disagrees.

The starting point for all assessments is the market. See RSA 75:1. Therefore, whatever methodology is used must reflect the market. The cost approach is considered an acceptable methodology for appraising common properties because of the principle of substitution. The board concluded given (1)

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the Taxpayer's evidence and (2) the board's technical knowledge, See RSA 541-A:18, v(b), that the Town's cost approach, as applied to the Property, was flawed. Perhaps the Green manual is flawed or perhaps the assessors failed to use adequate judgment or failed to use the manual correctly. Whatever the reason, the Property's assessment was excessive and required adjustments. Thus, given the divergent cost estimates, the board turned to Marshall & Swift, a nationally recognized valuation service, to assist the board in giving weight to the conflicting estimates of value. Moreover, the

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board's initial judgment was that the Town's replacement cost was excessive.

The Town's argument that all commercial property was similarly assessed and now the Property is proportionally underassessed compared to other commercial properties. The question is not proportionality within a class of properties but proportionality within an entire Town. Appeal of Sunapee, 126 N.H. 214, 219 (1985).
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 order has been mailed this date, postage prepaid, to Gary M. Stern, Representative for the Taxpayers; and Chairman, Selectmen of Bartlett.

Dated: June 1, 1992
Valerie B. Lanigan, Clerk

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