

Donald P. Wade, James R. Wade and Sandra Stanisewski
v.
Town of Hinsdale

Docket No. 7441-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessments of \$167,900 (50/27) and \$170,100 (50/28) totalling \$338,000 on 2 multi-unit buildings with 5 and 6 units respectively (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 they were disproportionally taxed.

The Taxpayers argued the assessments were excessive because:

- 1) the income and expense figures could not support a purchase at the assessments;
- 2) the sales market for apartment buildings and the rental market for apartments in the Town are weak; and
- 3) the buildings require significant maintenance, including trash disposal fees because the Town would not let the Taxpayers use the Town dump because the Taxpayers are not residents.

The Town argued the assessment was proper because it was supported by an assessment analysis of other multi-unit buildings. The Town admitted there were no sales in the sales study and only 5 rents were used in the rent study because of the lack of response to the rent survey.

Based on the evidence we find the correct assessments should be \$272,955 total. (The Town can allocate between the two properties and by land and building as it sees fit.) This assessment is ordered for the following reasons: 1) the Taxpayers' income-and-expense arguments demonstrated the assessments were excessive;

2) the Taxpayers' rents were within the market rent, especially because the rents included heat;

3) the Town's estimated gross income was \$50,700 while the Taxpayer stated the gross income was actually \$44,800, the difference attributable to the Taxpayers' testimony of higher vacancy and loss rates;

4) the Property net-operating income should be approximately \$30,025 (\$44,800 minus: a) insurance \$2,300; b) utilities \$7,425; c) repairs and maintenance \$2,360; and d) management \$2,690 (6% of \$44,800); and

5) using an 11% capitalization rate results in a \$272,955 value under the income approach, (unfortunately, due to the lack of sales in the Town, this figure cannot be compared with the comparable sales, but the Taxpayers' evidence supports this value.)

There being solid evidence of overassessment, we grant an abatement.

If the taxes have been paid, the amount paid on the value in excess of \$272,955 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Member

Ignatius MacLellan, Esq., Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Donald Wade/James Wade/Sandra Stanisewski, taxpayers; and the Chairman, Selectmen of Hinsdale.

Valerie B. Lanigan, Clerk

Date: April 9, 1992