

Donald N. Lacroix, et al

v.

Town of Tilton

Docket No.: 10569-90

DECISION

The "Taxpayer" appeals pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$224,100 (land, \$90,400; building \$133,700) on a .447-acre lot with a 6-unit apartment building (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 203.09(a); 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) an appraisal by Paul J. Doucette estimated a \$150,000 market value as of November 6, 1990; and

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2) apartments, multi-family properties and condominiums are depreciating at a greater rate than other classes of property which created a disproportionate unfair and unequitable tax burden on the subject.

The Town argued the assessment was proper because:

- 1) the Taxpayer's appraiser did not submit any comparables to support the estimate of value;
- 2) similar multi-family parcels were assessed within range of the subject Property;
- 3) sales of two unit apartments support the Town's consistent methodology in assessing properties and the assessments were well within range of the sale prices; and
- 4) the higher values found on the 5 and 6 unit dwellings were principally due to their greater use and utility in relation to smaller less productive parcels.

Prior to deliberations, the board's inspector at that time, J. Philip Estey, reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment should not be changed. During deliberations, the board's inspector, at that time Scott Bartlett, reviewed the file and Property and filed a report recommending an adjustment (copy enclosed). Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it

the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

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#### Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$190,000.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a Taxpayer's entire estate to determine if an abatement is warranted.

See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the municipality shall make this allocation in accordance with its assessing practices.)

During the initial review of the parties' briefs, the board noted the relatively high land value for the Taxpayer's Property relative to other multi-family property that was submitted as comparables by the Town. Consequently, the board requested it's inspector at that time, Scott Bartlett, to review the file and submit a report to the board on the Taxpayer's Property (copy enclosed).

The board finds Mr. Bartlett's report to be the best evidence of the proper assessed value of the Property. This report is further supported by the photographs of the Property showing some deferred maintenance and by the

high land value which apparently is based on the lot's commercial zoning and potential. Since it is improved with the existing residential structure, however, the land value does not contribute as much to the total market value as it would if vacant and available for a commercial development.

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If the taxes have been paid, the amount paid on the value in excess of \$190,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been

mailed this date, postage prepaid, to Donald N. Lacroix, et al, Taxpayer; and  
Chairman, Selectmen of Tilton.

Dated: January 24, 1994

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Lynn M. Wheeler, Deputy Clerk

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- 2) similar multi-family parcels were assessed within range of the subject Property;
- 3) sales of 2-4 unit apartments support the Town's consistent methodology in assessing properties and the assessments were well within range of the sale prices; and
- 4) the higher values found on the 5 and 6 unit dwellings were principally due to their greater use and utility in relation to smaller less productive parcels.

As stated by the Town's representative, Avitar, the taxpayer's appraiser did not submit any comparables or analysis; only an opinion of value. Since there is no information for me to examine, I cannot offer an opinion on the \$150,000 estimate of value.

Avitar has offered the assessments on two multi-family properties as comparables. Listed below is a comparison between the subject and these two comparables:

Map/Lot	# of Units	Assessment	Assessment per Unit
U06-22(subject)	6	\$224,100	\$37,350
U04-07	6	\$292,600	\$48,767
U06-70	5	\$183,800	\$36,760

Avitar has also submitted a list of a two, a three and 2-four family sales which occurred form May 1988 to February 1990. These indicate that the assessments were within \$2,000 of the actual selling prices.

No property record card was submitted for Lot #U6-70; however, a further analysis of the assessments of the subject property and the five other properties is on page 5 of this report. A comparison of land values only or building values only shows a disproportionate assessment. The subject property has a relatively high land value; however, the building value appears to be too low. Since, in making a decision on value, the Board looks at the Property's value as a whole, further analysis will be done using the total assessment per usable square feet of building and total assessment per number of apartment units. Listed below is a summary of these valuation indicators:

	Assessment per USF	Assessment per Unit
Subject	\$40.92	\$37,350
Range of Values	\$38.03 to \$58.41	\$30,025 to \$50,000
Median Value	\$46.62	\$38,113
Average Value	\$47.75	\$40,394

The above analysis would seem to indicate that the subject property was fairly assessed; however, the courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties.

The Town's representative has stated that the four sales submitted "show that the manner and method for determining values in the Town of Tilton has been fairly and equally applied to all properties." The assessments on all four of the sale properties are within \$2,000 of the actual selling price; however, the sales occurred from May 1988 to February 1990, a period which experienced declines in the real estate market. No adjustments were made to account for the declining market. Mr. Lacroix felt that properties like the subject were declining at an even greater rate than other classes of properties; although no data was submitted to support this claim. Listed below is an analysis of the equalization rates(ER), as established by the Department of Revenue, of Tilton and six neighboring Towns:

	1988 ER	1989 ER	% Change	1990 ER	% Change
Tilton	.28	.32	-14.3%	NA	--
Sanbornton	.40	.46	-15.0%	.51	-10.9%
Belmont	NA	1.01	--	1.09	-7.9%
Northfield	NA	1.00	--	.99	+1.0%
Franklin	NA	1.00	--	1.10	-10.0%
Canterbury	.41	.49	-19.5%	.61	-24.5%
New Hampton	.29	.33	-13.8%	.43	-30.3%
Median			-14.7%		-10.5
Average			-15.7%		-13.8

Most appraisers have been using a negative trending factor of 6% to 24% per year since 1988. The above analysis indicates that a trending factor -12% per year is appropriate for the majority of properties in this area. The equalization ratios are based on the median ratio for all classes of properties; however, since no supporting data was submitted by the taxpayer, -12% per year will be used for further analysis.

The four sales have been trended on the spreadsheet on page 5. The trended sales indicate a median assessment to sales ratio of 1.181 and an average ratio of 1.169. Multiplying the assessed value of the subject property by the reciprocal of the average of the median ratio and the average ratio produces an adjusted assessment of \$190,723 ( $1 \div 1.175 \times \$224,100$ ).

Listed below is a summary of the trended sale prices(TSP) per apartment(Apt) and the trended sale prices per usable square feet(USF):

Property Owner	# Apt	TSP per Apt	USF	TSP per USF	USF/ Apt
Lacroix-Subject	6		5,476		913
Longley	2	\$38,336	1,712	\$44.79	856
Grimes	3	\$31,822	2,982	\$32.01	994
Bonefant	4	\$29,778	2,802	\$42.51	701
Keith	4	\$32,716	2,750	\$47.59	688

Of the four sales, the Longley property is the least comparable as it is only a two-family dwelling. The Grimes property is only a three-family, but it has a comparable size per apartment unit. The Bonefant and the Keith sales are more comparable in number of units, 4 each, but the units are much smaller. All four of the sale properties are in better condition than the subject property and are located in comparable locations (even though none of the sales are located in the commercial zone). Taking all of these factors into consideration, it is my opinion that based on these sales, the appropriate value per apartment is \$30,000 and the appropriate price per usable square feet is \$32.00. Applying these values produces the following indicated values:

$$\$30,000 \times 6 \text{ apartment units} = \$180,000$$

$$\$32.00 \times 5,476 \text{ square feet} = \$175,232$$

**Conclusion:** Based on the information that has been provided by Avitar and the taxpayer and based on my experience as a real estate appraiser, it is my opinion that the fair assessed value of the subject property as of April 1, 1990 is between \$175,000 and \$190,000.

Very truly yours,

Scott W. Bartlett  
Board of Tax and Land Appeals  
Review Appraiser