

Catherine Coen

v.

Town of Tilton

Docket No.: 10601-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$160,900 (land \$22,000; building \$138,900) on a .2-acre lot with a 3-unit apartment house (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 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 neighborhood had a negative impact on the Property, i.e., the Property is abutted by a restaurant -- exhaust fumes come into the house from its parking lot full of cars parked only six feet from the bedroom window -- and

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the dumpsters were often overflowing with trash, the Property also abuts a vacant theater and a vacant apartment house, both of which are fire hazards, across the street is a condemned, boarded-up house, and since the police station moved out of the area there are safety concerns;

2) the land has two rights-of-way, which affect the value;

3) the selectmen said the taxes were high because the revaluation was based on 1980's prices, not 1990;

4) the neighboring lot was listed for sale in 1986 for \$125,000 and received no buyers; and

5) the Town's comparables are not comparable because two are two-unit apartments (one with a garage) with more acreage and better neighborhoods, and the other two are four-unit apartments (one with a garage) with more acreage.

The Town reduced the assessment \$11,900 to address the Property's location and neighborhood, resulting in a \$149,000 assessment. The Town argued the adjusted assessment was proper because:

1) two, two-unit apartments sold in May, 1988 for \$99,000 with a \$100,000 assessment and December, 1988 for \$113,000 with a \$113,400 assessment, and two, four-unit apartments sold in December, 1989 for \$154,900 with a \$153,700 assessment and February, 1990 for \$120,900 with a \$120,100 assessment;

2) the Taxpayer failed to prove the assessment was disproportional; and

3) the same methodology was used throughout the Town.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board. In this case, the inspector only reviewed the file; he did not perform an on-site inspection.

This report is enclosed with the board's decision. Note: The inspector's

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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.

Board's Rulings

Based on the evidence, the board finds the correct 1990 assessment to be \$149,000 (land \$20,000; building \$129,000) which is the Town's recommended adjustment from -5% to -10% to recognize the location and the neighborhood.

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been 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 of Town of Sunapee, 126 N.H. at 217-18.

The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

If the taxes have been paid, the amount paid on the value in excess of \$149,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

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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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been
mailed this date, postage prepaid, to Catherine Coen, Taxpayer; and Chairman,
Selectmen of Tilton.

Dated: June 9, 1993

Melanie J. Ekstrom, Deputy Clerk

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