

Charles F. Thorn  
v.  
City of Franklin

Docket No. 8381-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1990 assessment of \$104,900 on a two-unit, rental property (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 he was disproportionately taxed.

The Taxpayer argued the assessment was excessive because:

- 1) the Property has only two units and the units are difficult to rent;
- 2) the Property was purchased in 1986 for \$75,000 and only \$5,500 of improvements have been done;
- 3) the Property has been for sale for \$73,900 since July, 1990 without any offers; and
- 4) a May, 1991 appraisal estimated the value to be \$57,000.

The City argued the assessment was proper because:

- 1) the Taxpayer failed to include labor costs in the improvements value;
- 2) the Property was purchased as a two-family;
- 3) the Taxpayer's appraisal is unacceptable;
- 4) the Property was listed in May, 1989 for \$112,000; and
- 5) same methodology was used in assessing the Property as was used throughout the City.

Based on the evidence we find the correct assessment should be \$79,550 (land, \$15,600 and building \$63,950).

The board must determine whether the assessment has resulted in the Taxpayer paying an unfair share of taxes. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

It is the board's judgment that the assessment, when equalized (\$95,365), greatly exceeds the Property's market value on April 1, 1990. See RSA 75:1. All of the evidence supports this conclusion, even when viewing the evidence in the City's favor. First, the assessment results in a \$47,680/per-unit, equalized value, which is excessive given the Property's location, condition and low rents. Second, even if both units rented for \$500 month, the maximum gross income would be \$1,000/month x the gross rent multiplier of 70 used by the Taxpayer = \$70,000. Third, if one does a quick income calculation with rents at \$540/month x 2 units x 12 months = \$12,960 gross rent less 10% vacancy, 7% management and 15% expenses, results in net operating income of \$9,220/.105 capitalization rate = \$87,810. All of this shows overassessment. We also note the property record card states this was assessed on a three-unit building when it has only two-units.

The board has, therefore, given the building additional depreciation as follows: \$115,778 x .65 (physical) x .85 (functional) = \$63,950 plus \$15,600 for land = \$79,550.

If the taxes have been paid, the amount paid on the value in excess of \$79,550 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Charles F. Thorn, taxpayer; and the Chairman, Board of Assessors of Franklin.

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Melanie J. Ekstrom, Deputy Clerk

Date: March 27, 1992

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