

James P. and Wendy M. Smith

v.

Town of Epping

Docket No.: 8468-90

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$122,300 at Governor's Green Condominium, consisting of a two-story townhouse condominium (the Property). The Taxpayers 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 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(3); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved they were disproportionately taxed.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was purchased April, 1990, for \$80,000;
- 2) it was assessed at a time when real property values were totally

overinflated;

3) property assessments should be based on a median value;

4) the site's location (being 1 mile from the Keefe Superfund site, 1 mile from the New England Dragway, and .3 miles from the Star Speedway), the condition of site (unlandscaped areas, uncapped foundations), and the 1990 real market values; and

5) a fair and appropriate assessment would be \$91,000.

The Town argued the assessment was proper because:

1) valuations are based on the 1987-1988 values, which are consistent with the rest of the Town; and

2) site location (i.e., race tracks and the former Keefe Site) is irrelevant to the assessment of Taxpayers' Property because they are a great distance from this location.

The board's inspection verified that the Property was within .3 miles of the racetrack and was within 1.3 miles of the Drag Raceway and Keefe Superfund.

Based on the our review of the evidence, including the board's inspector's report, the sales comparison analysis submitted by the Taxpayers, and the Taxpayers' arguments, we find: (1) an economic factor of 5% should be applied (as given to an abutter of the Taxpayers) due to the traffic and nearby race tracks, and (2) a further 15% adjustment should be given because of the 1990 condominium market, which showed a great down turn, and because this development is not finished (only 8 of 28 units built). These adjustments are further supported by the Taxpayers' \$80,000 purchase price, there being no evidence except that it was an arms-length purchase. These adjustments result in an assessment of \$97,840.

The board is not obligated or empowered to establish a fair market

value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the taxpayer[s] paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Bickman 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).

If the taxes have been paid, the amount paid on the value in excess of \$97,840 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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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

I certify that copies of the within decision have been mailed this date, postage prepaid, to Wendy and James Smith, Taxpayers and Selectmen of Epping.

Dated: October 31, 1991

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Melanie J. Ekstrom, Deputy Clerk