

James F. Walker and Alvin H. Miller

v.

Town of Amherst

Docket No.: 8668-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 total assessment of \$137,400 on their real estate consisting of two condominium units assessed at \$68,700 each (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 assessments were 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 their burden and proved they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because:

1) assessed values when equalized at current rate indicate values above current market values based on recent sales;

2) sales and assessment information falls within the time frame used by the Department of Revenue Administration in computing assessment ratios; and
3) the Town is using 1987 values to substantiate its claim of equitable assessments, but they are not relevant in the 1990 tax appeal.

The Town argued the assessment was proper because:

1) the equalization rate for the 1990 tax year was .63 percent;
2) Taxpayers have failed to prove that disproportionality exists; and
3) the Town is "using a base valuation year of 1984, at which time there was not disproportionality."

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the taxpayer 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 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).

Increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

The Taxpayers' evidence, the Town's admissions, and the board's knowledge of the condominium market support a finding that condominium values, especially those condominiums in the lower end of the market, dropped in value proportionally more than other properties in the Town.

Based on the above reasons, we find the correct total assessment

should be \$110,260, consisting of \$55,130 on the two condominium units located on Skyline Drive. The board arrived at these assessments by using the sales and adjusting them for time given the declining market and then by applying a ratio to get these assessments within an acceptable range of other assessments.

If the taxes have been paid, the amount paid on the value in excess of \$110.260 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

I certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Property Tax Consultants and Chairman, Selectmen of Amherst.

Dated: October 29, 1991

Melanie J. Ekstrom, Deputy Clerk