

Brandon Apartments

v.

Town of Bristol

Docket No.: 8867-90

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$197,000 (land, \$56,800; buildings, \$140,200) on its real estate consisting of a dwelling at 15 Summer Street converted to six rental units (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 it was disproportionately taxed.

The Taxpayer argued the assessment was excessive because:

- 1) two of the apartments are on the third floor and are quite small; and
- 2) the expense of maintaining the units is becoming a larger percentage of the gross rents.

The Town argued the assessment was proper because:

- 1) three sales of comparable properties in the neighborhood indicate values per rental unit from \$28,675 to \$40,416; and
- 2) the Taxpayer's Property is assessed at \$32,835 per unit.

Based on the evidence, we find the correct assessment should be \$174,150 (land, \$56,800 and building, \$117,350). This assessment is ordered because:

- 1) the comparables submitted by the Town have average unit living areas, based upon calculations from the assessment cards, ranging from 1015 square feet to 1167 square feet;
- 2) the Taxpayer's units have an average unit living area of only 590 square feet;
- 3) the sale prices of the comparables, calculated on a per square foot of living area, range from \$24.57 to \$37.84;
- 4) the Taxpayer's total assessment, calculated on a per square foot of living area basis, is \$55.65;
- 5) the market would not recognize such a large differential on a square foot basis despite the larger incremental costs of outfitting smaller units with kitchen and bathroom facilities; and
- 6) therefore, an additional ten percent functional depreciation on the building is warranted to recognize the smaller size of the units.

Further, the board finds the Town, when lowering the grade of the building from a class 5 to a class 4, decreased the physical depreciation from

20% to 15%. The comparables and photographs of the Taxpayer's Property indicate that the original 20% physical depreciation is proper.

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If the taxes have been paid, the amount paid on the value in excess of \$174,150 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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Michele E. LeBrun, Member

I certify that copies of the foregoing decision have been mailed this date, postage prepaid, to Lloyd A. Fosse, Taxpayer; and Chairman, Selectmen of Bristol.

Dated: December 9, 1991

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Melanie J. Ekstrom, Deputy Clerk