

P. Brouillard Jr./Highland Street Trust

v.

Town of Ashland

Docket No.: 11117-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$115,350 (land \$7,500; building \$107,850) on a 10-unit apartment building (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 203.09(a); 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 Property is in severe disrepair and needs extensive renovations to meet fire and safety codes;
- 2) a January, 1991 appraisal estimated a \$155,000 market value and an \$85,000 liquidation value;

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- 3) the Property would never sell for the 1991, \$230,600 equalized value, despite the thousands of dollars in renovations;
- 4) the Property was assessed the same as business properties on Main Street, yet the Property is only a residence; and
- 5) the assessed value should be \$85,000.

The Town argued the assessment was proper because:

- 1) the Taxpayer's contention that the Property was assessed the same as businesses on Main Street does not prove disproportionality;
- 2) the Taxpayer's appraisal was intended for foreclosure proceedings and did not reflect the Property's true value;
- 3) the Property's per-unit assessment was well within the range of other multi-family, per-unit assessments, and the overall assessment was higher when compared to other multi-family residences because the Property has ten units where the others have four to seven units;
- 4) the same methodology was used throughout the Town; and
- 5) the Town already adjusted the assessment to address the Property's physical and functional condition.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the proper assessment should be \$98,450 (land \$7,500; buildings \$90,950). The inspector adjusted the building's value to address its age and condition. Note: The inspector's 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 proper assessment should be \$92,050, which equates to a \$184,100 equalized value on April 1, 1991. The board finds the best indication of the Property's value was the Taxpayer's appraiser's income analysis as adjusted below. The adjustments were for the following:

- 1) the real estate taxes were not used as an expense, but rather the Town's effective tax rate was added to the capitalization rate because this is the most appropriate method for addressing taxes in an abatement case; and
- 2) the management expense was reduced to 5%, which is more consistent with the board's experience.

<u>Potential Gross Income</u>	\$41,100
-Less Vacancy and Collection Loss (15%)	(<u>6,165</u>)
 <u>Effective Gross Income</u>	 \$34,935
-Less Expenses	
Fixed	
Insurance	\$2,000
Operating	
Repairs/Maintenance	\$4,500
Utilities	\$1,400
Management at 5%	\$1,726
Replacement Reserves (2%)	\$ 690
Miscellaneous (2%)	\$ 690
 -Total Expense	 (<u>\$11,006</u>)
 <u>Net Operating Income</u>	 \$23,930 (rounded)
 Net Operating Income	 \$ 23,930

prerequisite for appealing to the supreme court. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Christopher J. Kelly, PTRC, Agent for P. Brouillard Jr./Highland Street Trust, Taxpayer; and Chairman, Selectmen of Ashland.

Dated: January 20, 1994

Lynn M. Wheeler, Deputy Clerk

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