

David S. Cowley

v.

Town of Newton

Docket No.: 16565-95PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$197,100 on 1.79-acre lot with a 4-unit apartment building (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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) a 1992 market analysis of the Property estimated a value of \$148,000;
- (2) assessments of other multi-unit buildings indicated a unit value between \$30,394 and \$38,100;

- (3) a 1997 market analysis of the Property estimated a value of \$149,000;
- (4) the Property had been listed for sale at \$148,000, and the Taxpayer did not receive any offers; and
- (5) the assessment should be \$140,000.

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The Town argued the assessment was proper because:

- (1) the Town used HUD values for market values when determining income-property assessments; and
- (2) the front-foot values were determined by the revenue department using a sales analysis during the 1992 revaluation.

**Board's Rulings**

Based on the evidence, the board finds the proper assessment should be \$156,000, which is based on a \$150,000 market finding ( $\$150,000 \times 1.04$  equalization ratio).

The board grants this abatement for the following reasons.

1) While RSA 75:8 requires towns to review assessments and review the market, making assessment changes as necessary, towns must always be mindful that assessment changes must be based on market data. The Town did not present any market data to support the assessment change.

2) The Taxpayer, on the other hand, submitted valuation information concerning both realtors' estimates, a sale of a comparable property, and the Property's actual income. The 36 South Main property (a 6-unit property) sold July 1994 for \$150,000 or \$25,000 a unit. The Property's equalized assessment was \$47,375 per unit ( $\$197,100$  assessment  $\div$  1.04 equalization ratio  $\div$  4

units). The Taxpayer stated the 2 bedroom units rented for between \$490 and \$500 while the 1 bedroom units rented for \$450. (The tenants pay all utilities.) The Taxpayer also stated the occupancy was approximately 90%. A rough income approach would yield a value of only \$135,375.

\$500 x 2 apartments (2 bedrooms) x 12 months	\$ 12,000
\$450 x 2 apartments (1 bedroom) x 12 months	<u>\$ 10,800</u>
	\$ 22,800
less 5% vacancy and collection	<u>.95</u>
	\$ 21,660
less 25% expenses	<u>.75</u>
	\$ 16,245
12% cap rate	<u>÷ .12</u>
	\$135,375

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The board finds the (approximate) \$150,000 market value estimate by the realtors to be the best market evidence.

Whenever the board grants an appeal because of clerical error or plain and clear error of fact, and not interpretation, RSA 76:17-b authorizes the board to order the Town to reimburse the Taxpayer's filing fee. The board finds such an order is appropriate. The board finds that the Town had no basis for adjusting the assessment, and the Town did not submit any market data to support the adjustments. Therefore, the board finds the Town changed the assessment without basis, requiring the Taxpayer's appeal. The Town is ordered to reimburse, within ten (10) days of the clerk's date, the Taxpayer's \$65 filing fee.

If the taxes have been paid, the amount paid on the value in excess of \$156,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule

TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1996. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are

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limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David S. Cowley, Taxpayer; and Chairman, Selectmen of Newton.

Date: March 27, 1997

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Valerie B. Lanigan, Clerk

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