

Charles R. Arthur, Jr.

v.

Town of Newton

Docket No.: 16574-95PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$199,300 on a 2.53-acre lot with a multi-unit residential 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) the Property had been listed for sale at \$159,000; the Taxpayer received an offer of \$125,000, which he rejected; \$142,000 was then agreed upon;

however, this sale was not consummated due to lack of financing at that selling price (The bank involved would only loan \$90,000 towards what it considered to be an appropriate selling price of \$125,000.);

(2) the Property was actively marketed for 18-24 months with no activity near the listing price of \$159,000; and

(3) the assessment should have been \$125,000.

Page 2

Arthur v. Town of Newton

Docket No.: 16574-95PT

The Town argued the assessment was proper because:

(1) the town used HUD rents for determining income producing property assessments; and

(2) the commercial front-foot values were determined by the revenue department, using a sales analysis from the 1992 revaluation.

#### **Board's Rulings**

Based on the evidence, the board finds the proper assessment should be \$161,200 (\$155,000 market finding x 1.04 equalization ratio).

The board makes the following findings.

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

2) The Taxpayer described to the board the attempts to sell the Property. This evidence demonstrated that the \$191,600 equalized value (\$199,300 assessment ÷ 1.04 ratio) was unquestionably excessive. The Taxpayer was willing to sell the Property for approximately \$140,000 to \$142,000, but the Taxpayer could not find a purchaser at that price, especially because the banks would not value the Property in that range.

3) A quick income approach demonstrates a value of approximately

\$155,000.

\$460 x 2 apartments (3 bedrooms) x 12 months	\$ 11,040
\$440 x 4 apartments (2 bedrooms) x 12 months	\$ 21,120
\$400 x 2 apartments (1 bedroom) x 12 months	<u>\$ 9,600</u>
	\$ 41,760
20% vacancy and collection	<u>x .80</u>
	\$ 33,408
30% expenses	<u>x .70</u>
	\$ 23,385
Heat and hot water	<u>- 5,000</u>
	\$ 18,385
12% cap rate	<u>÷ .12</u>
	\$153,200

Page 3

Arthur v. Town of Newton  
Docket No.: 16574-95PT

4) This Property is a low-quality and inferior apartment set up. The Property will generally attract low rents and high vacancy and collection loss. The Taxpayer's history with the Property supports this conclusion.

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. 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 \$161,200 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

Page 4  
Arthur v. Town of Newton  
Docket No.: 16574-95PT

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 Charles R. Arthur, Jr., Taxpayer; and Chairman, Selectmen of Newton.

Date: March 27, 1997

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Valerie B. Lanigan, Clerk

0006