

Irene Realty Trust

v.

Town of Plaistow

Docket Nos. 4103-87 and 4299-88

DECISION

These two appeals, having been consolidated for hearing, were heard, as scheduled on June 29, 1989. The Taxpayer was represented by James B. Giannatsis, Trustee. The Town was represented by Mary Pinkham, Diane M. Frechette and John McSorley, Appraisers of the Department of Revenue Administration.

The Taxpayer appeals, pursuant to RSA 76:16-a, the 1987 assessment of \$1,121,900 (land, \$313,350; buildings \$808,550) and the 1988 assessment of \$1,185,600 (land, \$319,300; buildings, \$866,300) placed on his real estate, located on 166 Plaistow Road. The property consists of unfinished office condominiums situated on 1.466 acres of land.

Neither party challenged the Department of Revenue Administration's equalization ratios of 100 percent for both the 1987 and 1988 tax years for the Town of Plaistow.

The Taxpayer argued that the value for the land and buildings was too high and the percent of completion as of April 1, 1987, and April 1, 1988, was incorrect.

The Taxpayer described the property as being 1.47 acres of commercial land with a 35 foot right of way to Plaistow Road. In November of 1986 the Taxpayer as general contractor started construction of a 3 story office building on the site. The Taxpayer testified that on April 1, 1987, only the foundation and steel frame were in place. The brick veneer exterior and windows were not installed until May, 1987. The Taxpayer further testified

that as of April 1, 1988, the exterior was finished including paving the parking area and one of the

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eight office units (~1200 square feet) was complete on the interior. The balance of the interior had been partitioned with the plumbing and electrical work roughed in and the ceiling partially complete.

The Taxpayer alleged that as of April 1, 1987, only \$50,000 to \$75,000 had been expended on the building. He further alleged that by April 1, 1988, \$550,000 to \$600,000 had been expended and estimated it would cost \$75,000 to complete the unfinished interior work. Upon questioning the Taxpayer estimated that the building was approximately 10 percent complete on April 1, 1987, and 65 percent to 70 percent complete on April 1, 1988.

The Taxpayer stated that the building and contents were insured for \$1,000,000 and that most of the \$1,000,000 loan taken out for the building had been expended in the past two years with some being used to pay interest on the loan.

He testified that the offices were presently unoccupied except for one unit that was his own office. The building had been approved by the Town for office condominiums. He stated that the building has 8 units with approximately 12,000 square feet of office space. The units have been listed for sale or for lease with asking prices of \$80,000 to \$90,000 per unit or \$90 to \$100 per square feet to lease. He stated that the economic rent in the area for office space was \$75 per square feet. He stated that in developing a good quality office complex he was attempting to lure business from the Route 128 area in Mass. at rents comparable to that area.

The Town stated that since the parcel had negligible road frontage, the land value was calculated by converting the front foot unit prices established from sales to a square foot calculation.

The Town recommended correcting the width of the building from 38' to 37'. Ms. Pinkham testified that the Marshall and Swift replacement cost manual was used in valuing the building, and that in her opinion the building was properly listed and categorized.

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Ms. Pinkham stated that the appraiser, Mr. Welch, had noted the initial appraisal was done on April 2, 1987, and that his estimate of 70 percent completion was most likely based on his observations on that date.

Ms. Pinkham further testified that in her opinion and based on her own observations the building was approximately 90 percent complete April 1, 1988.

In regard to the Taxpayer's allegation the Board rules as follows.

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state, and upon all estates within the same

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H.

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187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board finds as follows:

So as to appraise the lot comparably to other commercial properties that have frontage and would normally receive adjustments for excess frontage and undeveloped reasons, the basic lot value of \$319,295 should be further adjusted by comparable factors of .82 and .88. Paving was added to the lot prior to April 1, 1988, and is correctly valued at \$6,000. Thus the correct land value for 1987 is \$228,900 and for 1988 is \$234,900.

The correct size of the building is 37 x 152 or 5624 square feet per floor. The building is of good quality construction. The Taxpayer was the designer and contractor for the building having thus added value to the building above estimates provided by the Taxpayer. Lacking detailed evidence from the Taxpayer as to the cost of construction, the best evidence is the Town's revised completed replacement cost of \$1,124,700.

Based on testimony of the asking rental prices and the actual market rents of the area and the fact that seven of the units are vacant, the Board finds that the building is 25 percent over built for the market.

Thus the correct completed building value is \$843,525 ($\$1,124,700 \times .75$).

The Board finds that the best evidence before it as to the state of completion on April 1, 1987, is the listing on the appraisal card done by the Town's appraiser on April 2, 1987, of the various building components observed by him on that date. Based on that listing the Board finds that approximately 50 percent of the building was completed April 1, 1987, resulting in a building value of \$421,750.

Based on the evidence before the Board, it finds that the building was 85 percent complete as of April 1, 1988, with a resulting building value of \$717,000.

In summary the Board rules the following values are correct for the 1987 and 1988 tax years.

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	<u>1987</u>	<u>1988</u>
Land	\$228,000	\$234,900
Building	<u>\$421,750</u>	<u>\$717,000</u>
Total	\$650,650	\$951,900

If the taxes have been paid, the amounts paid on the values in excess of \$650,650 for 1987 and \$951,900 for 1988 are to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

— Anne S. Richmond, Esquire, Chairman

— (Mr. Twigg did not sit.)
George Twigg, III, Member

— Peter J. Donahue, Member

— Paul B. Franklin, Member

Date: 7/21/89

I certify that copies of the within Decision have this date been mailed, postage prepaid, to James B. Giannatsis, Trustee for Irene Realty Trust, taxpayers; and the Chairman, Selectmen of Plaistow.

— Michele E. LeBrun, Clerk

Date: 7/21/89

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