

Charles W. Keller, Trustee, a/k/a Spinnaker Realty Trust
v.
Town of Plaistow

Docket No. 5206-88 and 6403-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$588,100 (land, \$355,500; buildings, \$232,600) on property at 9 Hale Spring Road and the 1989 assessment of \$600,100 (land, \$355,500; buildings, \$244,600). Both tax years were consolidated for hearing. 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 he was disproportionately taxed.

The Taxpayer argued the assessment was excessive because the subject lot is in a residential zone, 'grandfathered' for a limited commercial use. The Town has told him no variances would be granted for expansion or other use.

The Town argued the assessment was proper because an appraisal report by MINCO (May 26, 1988) set the value for land and buildings at \$590,000.

Based on the evidence, including the board's inspector's report, we find the correct 1988 assessment should be \$472,200 (land, \$268,150 and building \$204,050). The assessment for 1989 is \$484,200 (land, \$268,150; buildings, \$216,050).

Mr. J. Philip Estey, the Board's inspector, viewed the property on May 11, 1990, after certain improvements to the second floor (office space) were completed. Appropriate adjustments to the building value were made to reflect the 1988 - 1989 difference.

If the taxes have been paid, the amount paid on the value in excess of \$472,200 for 1988 and \$484,200 for 1989 shall be refunded with interest at six percent per annum from date paid to refund date for each tax year.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue, Member

Ignatius MacLellan, Member

Date: May 2, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Charles W. Keller, Trustee, Spinnaker Realty Trust, taxpayer; and the Chairman, Selectmen of Plaistow.

Michele E. LeBrun, Clerk

Date: May 2, 1991

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