

Thomas A. Feehan

v.

Town of Derry

Docket Nos.: 6346-89 and 8765-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$323,500 on an 8-unit apartment building (the Property). (The original assessment was \$356,900, which was adjusted. The board assumes the Town has sent to the Taxpayer an abatement check with 6% interest for this adjustment.) 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 disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the increase in taxes reduced the cash flow and thus the Property's value;
- (2) the Town incorrectly calculated the building's square-footage;

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- (3) the converted house has some functional problems; and
- (4) the Taxpayer argued the assessment should be approximately \$230,000-\$260,000.

The Town submitted an appraisal report which included estimates of value by the cost, income and market approaches and an assessment comparison of comparable properties.

The Town argued the adjusted assessment was proper because:

- (1) it was based on the income approach, calculated with adequate adjustments to the rents and expenses to reflect problems with the Property; and
- (2) it was supported by the Town's report.

The board finds the following assessments:

1989 -- \$298,200 (land, \$70,500; building, \$227,700); and
1990 -- \$283,300 (\$298,200 x .95).

These assessments are ordered because the Taxpayer raised sufficient questions about the assessments to warrant a reduction. Given the problems with the property -- converted house, small units, heating issues -- the board adjusted the building by 10% for functional depreciation. The board's 1990 assessment was simply the 1989 assessment reduced 5% to account for the indisputable down-turn in values of multi-unit buildings, which appear to have fallen faster than other properties.

If the taxes have been paid, the amount paid on the value in excess of

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\$298,200 for 1989 and \$283,300 for 1990 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas A. Feehan, taxpayer; and Chairman, Selectmen of Derry.

Dated: June 26, 1992

Valerie B. Lanigan, Clerk

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