

**Molly Reid Chapter - DAR**

**v.**

**Town of Derry**

**Docket No.: 6922-89**

**DECISION**

The "Taxpayer" appeals the "Town's" 1989 assessment of \$120,000, claiming the Town overvalued the "Property" and erred in not exempting the entire Property under RSA 72:23 V. The Property is the Taxpayer's headquarters and has a museum and genealogical library on the first floor and a caretaker's apartment on the second floor. The Town exempted 50% of the building (the first floor) but none of the land. The Taxpayer claimed the total assessment of \$183,000 was excessive because of certain problems with the Property (including a leaky roof and no heat on the first floor) and because three realtors estimated a value of between \$129,000 - \$139,000.

**Valuation**

The assessment before exemption shall be \$164,100 (land, \$57,000; building, \$107,100). This assessment was arrived at by giving the building an additional 15% depreciation, which adjustment was supported by the Taxpayer's evidence of problems with the building, some of which the Town did not know about, e.g., no heat on the first floor. Additionally, the \$156,000 is within a range of the Taxpayer's Gustitus' appraisal.

**Exemption**

The parties agreed the Taxpayer was a qualifying organization. Thus, the remaining issue was whether the Taxpayer "used and occupied" the Property, qualifying the Property for exemption. The Town agreed 50% of the building was so used, but the Town did not exempt any land or the caretaker's apartment on the second floor.

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The board finds the Taxpayer's total assessment with exemptions should be \$41,000 (land, \$14,250; buildings, \$26,750). The board finds the caretaker's apartment to have a mixed use -- it benefits the Taxpayer's use and it benefits the caretaker. The first use is exempt; the second use is not. The rent was \$250/month, which was at least 50% below market rent (based on other Derry cases). Thus, we have exempted one-half of the second floor. This does not mean the Taxpayer can charge no rent and get full exemption in future years. We find the apartment has rental potential whether or not it is actually rented.

Finally, the Town erred in not exempting the land by the same proportion as the building was exempted. See St. Paul's School v. City of Concord, 117 N.H. 243, 254 (1977) ("The land appurtenant to the [tax-exempt property] should be taxed in proportion to the portion of the [exempt property] which is taxed."). Since 75% of the building is exempt, 75% of the land must also be exempt.

If the taxes have been paid, the amount paid on the value in excess of \$41,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Louise Audette, Representative for the Taxpayer; and Chairman, Selectmen of Derry.

Dated: July 22, 1992

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Valerie B. Lanigan, Clerk

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