

Peter R. Milnes

v.

Town of Derry

Docket No. 6937-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$198,700 (land, \$56,300; buildings, \$142,400) on his real estate on 11 Wall Street, consisting of a 2 story commercial building on a .125 acre lot (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 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) after being marketed for over a year, the taxpayer purchased the property in early 1989 for \$160,000; and

(2) capitalizing the net operating income from a five year lease signed in March of 1989 indicates a market range of \$150,000 - \$179,000.

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

The Town argued the assessment was proper because:

(1) the Taxpayer's capitalization rate of 11-13% was too high (should have been 7-9% according to Town); and

(2) the sale of the Property was contingent on a 5 year lease with a visiting nurse service. (The Taxpayer was on the board of directors of the Visiting Nurse Association.)

Board's Rulings

Based on the evidence, we find the correct assessment should be \$150,000. This assessment is ordered because the board finds an economic condition factor of 75% is warranted for the 1989 assessment. The Town acknowledged the office location was poor (off Broadway) and had no "visibility" from the main street. An appraisal done for the Taxpayer's bank which used all three approaches to value in February, 1989 showed range from \$150,000 - \$160,000.

If the taxes have been paid, the amount paid on the value in excess of \$150,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. The Board leaves the allocation between land and building to the Town, according to the methodology used throughout the municipality.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

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

Dated: October 12, 1992

Melanie J. Ekstrom, Deputy Clerk

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