

**Alexander Kock Chee Lee and Stephen H. Lee**

**v.**

**Town of Derry**

**Docket No. 7066-89**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$184,100 (land, \$47,700; buildings, \$136,400) on their real estate at 41 East Broadway, consisting of a three-story building of one commercial and two residential rental units on a .06-acre lot (the Property).

For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the building is in need of repair, being over 100 years old;
- (2) a limited parking area contributes to a vacancy problem--only on-street parking is available; and
- (3) the actual income from the property is less than was estimated by the Town.

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

The Town argued the assessment was proper because:

(1) this area of downtown Derry had been part of an economic development plan since 1974 and properties were subject to much speculation from 1987 to 1989;

(2) a 35-percent adjustment was given to the building value for the lack of parking and general economic conditions;

(3) two public-parking lots are within 100 feet, plus or minus, from the Taxpayers' building; and

(4) the property was purchased by the Taxpayers in February of 1988 for \$191,000.

Based on the evidence, we find the correct assessment should be \$165,000. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.) This assessment is ordered because:

(1) the Taxpayers' purchase price of the Property for \$191,000 in February of 1988 is in excess of its market value a year later and is given little weight due to the initial overpayment by the Taxpayers and the change

in the market;

Alexander Kock Chee Lee and Stephen H. Lee v. Town of Derry

3

(2) this proper assessment is derived:

(a) via the cost approach, the additional 35-percent economic depreciation applied to the building should also be applied to the land as it is similarly affected by the general economic condition of the neighborhood; and

(b) via the income approach, a 20-percent vacancy rate on the retail portion of the building is more reasonable as supported by the evidence.

If the taxes have been paid, the amount paid on the value in excess of \$165,000 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

Paul B. Franklin, Member

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alexander Kock Chee Lee and Stephen H. Lee, the Taxpayers, and to the Chairman, Board of Assessors, Town of Derry.

July 30, 1992

Valerie B. Lanigan, Clerk