

Norwich Realty Associates

v.

Town of Amherst

Docket Nos.: 7340-89 and 8190-90

**DECISION**

These appeals were consolidated for hearing. The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$2,156,300 (land, \$229,400; buildings, \$1,926,900) on its real estate, consisting of a warehousing/office complex of 89,600 square feet on 5.22 acres (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 assessments were excessive because:

- (1) the assessment equalized by the 1989 ratio of 56% indicates a market value of \$3,850,500;
- (2) the market value as indicated by the income approach based on actual rental income is \$1,800,000;

Norwich Realty Associates

v. Town of Amherst

Docket Nos.: 7340-89 and 8190-90

Page 2

- (3) the market value as indicated by the cost approach is \$2,953,000; and
- (4) the second floor has limited utility and has had a poor rental history due to it being excess office space with only narrow stair access.

The Town argued the assessment was proper because:

- (1) indications by the cost and income approach estimate the value at approximately \$2,600,000; and
- (2) due to variations from the median ratios of 10 percent and 9 percent, respectively, for 1989 and 1990, the proper adjustments to equalize the market value are 66% and 71%, respectively. These adjustments indicate proper assessments of \$1,758,000 in 1989 and \$1,891,200 in 1990.

Based on the evidence, we find the correct assessment should be \$1,685,300 (land \$229,400 and buildings \$1,455,900). This assessment is ordered because:

- (1) the Town, upon questioning, agreed that the replacement cost calculation for the building was based upon a methodology of appraising each of the seven portions as if separate. The board finds that the building should be appraised as if one building, not seven, accounting for a 15% lesser replacement cost;
- (2) the second story office area of the building is in excess of what the market will absorb due to the type of usage of the buildings (largely warehouse with minimal office needs) and due to its poorer access and

Norwich Realty Associates

v. Town of Amherst

Docket Nos.: 7340-89 and 8190-90

Page 3

visibility. Based upon the board's experience, a 10% adjustment to the Town's replacement cost is warranted to reflect this loss of utility and income vis-a-vis the second floor's replacement cost; and

Norwich Realty Associates

v. Town of Amherst

Docket Nos.: 7340-89 and 8190-90

Page 4

(3) this revised assessment of \$1,685,300 is generally supported by the Taxpayer's cost approach to value and the Town's indicated proper assessment by the cost and income approach.

The Town raised the question at the hearing as to the credibility and objectivity of the evidence of the Taxpayer's agent since his compensation was contingent upon a favorable decision from the board. The board rules, consistent with the dissent in Witt Co. v. Hamilton Board of Revision, 573 N.E. 2d 661 (Ohio 1991), that the credibility of the witness and the weight of the evidence is within the discretion of the Board. If the Board were to discern that an agent's objectivity and appraisal competence were compromised by the manner of compensation, then the Board would give little or no weight to the evidence. However, in this case, the Board finds that the Taxpayer's agent did a thorough review and analysis of the Taxpayer's Property and presented it in an organized appraisal report.

If the taxes have been paid, the amount paid on the value in excess of \$1,685,300 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

Paul B. Franklin, Member

Norwich Realty Associates

v. Town of Amherst

Docket Nos.: 7340-89 and 8190-90

Page 5

Michele E. LeBrun, Member

Norwich Realty Associates

v. Town of Amherst

Docket Nos.: 7340-89 and 8190-90

Page 6

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gary Stern, agent for the Taxpayer; and Chairman, Selectmen of Amherst.

Dated: July 15, 1992

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Valerie B. Lanigan, Clerk

0007