

Stabile & Prolman

v.

Town of Amherst

Docket Nos.: 7341-89 and 8189-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$1,016,400 (land, \$150,800; buildings, \$865,600) and \$1,017,300 (land, \$151,700; buildings, \$865,600), respectively, on a 30,240 square foot warehouse and office building on a 5 plus acre lot (the Property).

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

The Taxpayer has the burden of showing the assessments were 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 building was originally built in 1978 as a single-tenant building, but was partitioned into a multi-tenant building after it couldn't be leased;

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(2) the building has more office space versus assembly area than what the market generally wants;

(3) the Taxpayer's agent submitted an appraisal report which indicated market value of \$1,300,000 by the cost approach and \$1,400,000 by the income approach; and

(4) an equity analysis comparing the Property with other similar property in Amherst indicates the Taxpayer is disproportionately assessed.

The Town argued the assessment was proper because:

(1) the land was assessed comparably with other sites in the area;

(2) the building has 50% office area and 50% assembly - better than other similarly used property;

(3) the market value as indicated by the income approach is estimated at \$1,488,300;

(4) there should be an approximate 10% range around the equalization ratio; and

(5) using a ratio of 68% for 1990 (rather than the Town's official ratio of 63%) indicates an assessment of \$1,017,300 and supports the current assessment.

Based on the evidence, we find the correct assessment should be:

1989 - \$837,300 (land, \$150,800; buildings, \$686,500); and

1990 - \$838,200 (land, \$151,700; buildings, \$686,500).

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This assessment is ordered because:

- (1) the original design of the building and the under-utilized office space in the building warrants a 20% functional obsolescence in the Town's replacement cost for the building; and
- (2) the parties' estimate of market value support this reduced assessment.

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 \$837,300 for 1989 and \$838,200 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

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 9, 1992

Valerie B. Lanigan, Clerk

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