

Amherst Street Realty Trust

v.

Town of Merrimack

Docket Nos.: 7559-89 and 9704-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of:

Map/Lot #Land AssessmentBuilding AssessmentTotal Assessment

"Lot 6"\$3,188,300\$7,128,200\$10,316,500; and
"Lot 8" \$ 587,100\$ 641,625\$ 1,228,725.

The Taxpayer owns, but did not appeal, Map 2B, Lot 004-1. For the reasons stated below, the appeals for abatement are granted for Lot 6 and denied for Lot 8.

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.

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The Taxpayer argued the assessments were excessive because:

- (1) based on an income analysis, the properties were worth--Lot 6 \$7,752,300 (1989) and \$8,303,300 (1990) and Lot 8 \$1,170,000 and (1989) and \$1,166,000 (1990);
- (2) the rents used in its income analysis were consistent with market rents;
- (3) units 16B to 19C were unfinished space; and
- (4) the Town erred in not using the income approach.

The Taxpayer submitted a report to support its position.

The Town argued the assessments were proper because:

- (1) the Taxpayer's income approach did not include rent or any value for the unfinished units (25,300 s.f.); and
- (2) the cost approach was chosen because the mall (Lot 6) had unfinished units and the computer program would not allow the income approach to be used with a cost value added for the unfinished units.

Board's Rulings

Based on the evidence, we find the correct assessment on Lot 6 should be \$8,500,000. This assessment is ordered because:

- (1) the Taxpayer failed to include any value for the unfinished units;
- (2) the income approach is the most appropriate approach for this rental property and was the approach used by the Town on other strip malls;

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(3) the cost approach is not the best approach because, as the Taxpayer stated, the market for this type of property would not pay more than the potential income would support; and

(4) we find the Taxpayer's capitalization rate more reflective of the market capitalization rate.

The board recalculated the Taxpayer's income analysis by two separate methods: 1) adding the Town's cost estimate for the unfinished space; and 2) adding rent for the unfinished space and increasing the vacancy/loss by 7.5% (15% divided by 50%). The board used 12,127 s.f. for the unfinished space and this figure was calculated by adding the square feet, as shown on the Taxpayer's lease plan, for units 16B through 19C. These calculations are as follows.

Taxpayer's income approach plus Town's cost on unfinished units.

<u>1989</u>	<u>1990</u>
\$7,752,300	\$8,303,300
+ 732,300	+ 732,300
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\$8,484,600	\$9,035,600

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Taxpayer's income approach plus income for the unfinished space and higher vacancy to reflect unfinished space.

<u>1989</u>		<u>1990</u>
\$756,110	Gross income of finished space	\$714,330
+ 97,020	Income on 12,127 sf @\$8/sf	+ 97,020
-----		-----
\$853,130	Potential gross income on all space	
\$811,350		
x .875	12.5% vacancy/bad debt and unfinished	x .875
-----		-----
\$746,490		\$709,930
+194,025		+304,750
-----		-----
\$940,515	CAM Reimbursement	
- 130,940	Effective gross income	\$1,014,680
-----	Expenses	- 137,115
\$809,575	Net operating income	\$ 877,565
÷ .1169	Capitalization rate	÷ .1169
-----		-----
\$6,925,365		\$7,506,970
+1,063,300	Excess land	+1,063,300
-----		-----
\$7,988,665	Total Value	\$8,570,270

Based on the calculations, we find an assessment on Lot 6 of \$8,500,000 for both years.

If the taxes have been paid, the amount paid on the value in excess of \$8,500,000 for each year on Lot 6 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

We find the Taxpayer failed to prove the Lot 8's assessment was disproportional.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Marvin F. Poer & Company, Representative for the Taxpayer; Office of the Assessor of Merrimack; and Jay L. Hodes, Esq., Representative for the Town.

Dated: February 22, 1993

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Valerie B. Lanigan, Clerk