

**Gregory E. Michael, Trustee of Interlaken Realty Trust**

**v.**

**Town of Merrimack**

**Docket No.: 7821-89**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$237,000 (land \$128,000; buildings \$109,000) on Map 6D-1, Lot 27, a .40-acre lot with a two-story building and outbuilding (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) the lot is nonconforming and thus requires a variance to make any expansion or change in use;
- (2) the Property's per-acre, land assessment exceeded the per-acre, land assessment on the abutting Alpha Trust property (a memorandum on this issue was submitted);

- (3) the outbuilding could not be used for office space in 1989 because to do so would have required renovations and utility hook ups; and
- (4) the proper assessment should be \$210,333, reflecting the nonconforming lot factor.

The Town argued the assessment was proper because:

- (1) the land value was derived from sales collected and analyzed during the revaluation;
- (2) the same methodology was used throughout the Town; and
- (3) the income approach was used in assessing the Property.

The Town admitted the land assessment did not consider the need for a variance, but since the income approach was used, the land assessment was only an allocation of the income value. In other words, as used in 1989, the Property's income would support the assessment.

#### **Board's Rulings**

Based on the evidence, the board finds the proper assessment is \$183,895.

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 the board finds the Town erred in both its income approach and its cost approach. The Town's cost approach was

flawed because no adjustment was made to the land even though the Property was a nonconforming lot. It is true that the Property was developed and could be used as a grandfathered lot, but some adjustment should have been made to this Property since conversion of its use was likely and such conversion would require a variance. The assessment should take into account all factors affecting value, and the need for a variance in this situation certainly is a factor that should have been considered. Additionally, the Town's cost approach was flawed because it valued the outbuilding as finished office space, but that building could not be occupied as office space in 1989 and required renovations and utility hookups to be used as office space. Because the board could not recalculate the Property's value on the cost approach, the board turned to the income approach.

The Town's income approach was flawed because it assessed the outbuilding as if it was an office building producing \$11.00 per-square foot of rent. Additionally, the Town erred in assessing any residential space when the entire two-story building was being used as office space. Therefore, the board has recalculated the Town's income approach as follows.

1,760 s.f.	x	\$11/s.f.	=	\$ 19,360
924 s.f.	x	\$ 2/s.f.	=	<u>1,848</u>
				\$ 21,208
		vacancy		<u>x .95</u>
				\$ 20,150
		expenses		<u>- 1,760</u>
				\$ 18,390
		management		<u>x .95</u>
				\$ 17,470
				<u>÷ .095</u>
				\$183,895

Page 4  
Interlaken Realty Trust v. Town of Merrimack  
Docket No.: 7821-89

If the taxes have been paid, the amount paid on the value in excess of \$183,895 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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gregory E. Michael, Trustee of Interlaken Realty Trust, Representative for the Taxpayer; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

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Valerie B. Lanigan, Clerk

0009