

David S.C. and Helen S.M. Feng

v.

Town of Merrimack

Docket No.: 7856-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$87,700 (land, \$21,000; buildings, \$66,700) on Map 4D-3, Lot 014-010, a 1.75 acre lot with a warehouse condominium (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) office usage is only 15% of the total area;
- (2) light assembly is only 15% of the total area;
- (3) the balance of 70% is used as warehouse space;

(4) the Town's \$9.90/s.f. was excessive when the present lease is for \$3.80/s.f.;

(5) there is a great range of assessments on condominiums; and

(6) an adjusted reassessment value of \$87,700 is still way too high and unreasonable.

The Town argued the assessment was proper because:

(1) it was consistent with the methodology used throughout the Town;

(2) it was based on income/costs models derived from market data collected during the revaluation; and

(3) the assessment is an adjusted assessment arrived after the appeal was filed and based on a visit to the Property, which resulted in a reduction of \$14,800 based on a reallocation of office and warehouse space.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

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Page 3

Concerning the Taxpayers' actual rent level, the board notes the \$3.00/s.f. was for October 1990 not April 1989. Moreover, the Taxpayers must show what the market rent would be not what the actual rent was.

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 David S.C. and Helen S.M. Feng, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 12, 1993

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Valerie B. Lanigan, Clerk