K & R Development, Inc.

v.

Town of Plaistow

Docket No.: 9340-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $1,476,400 (land $489,150; buildings $987,250) on a 6.73-acre lot with a commercial building containing retail stores and offices (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried its burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) an appraisal by both the market and income approaches estimates the market value at $896,000 and $700,600 respectively;

(2) the Town did not apply the proper land adjustments to the land calculation;

(3) the Property has approximately 10% of its floor space that is common area and not rentable;

(4) other nearby property had a lower rear acre base price used in the

assessment; and

(5) there are approximately 1600 square feet of unfinished office space that the Town did not adjust for.

The Town argued the assessment was proper because:

(1) no excess frontage adjustment was given to the frontage because it is totally used for parking; and

(2) the Town submitted three comparables - two of which sold in 1989 and 1991 and support the assessment equity.

Board's Rulings

Based on the evidence, we find the correct assessment should be $1,380,700 (land $492,550; building $888,150). This assessment is ordered because:

1) the rear land base value per acre should be corrected from $30,000 to $20,000; the Town conceded that possibly an error had been made in assessing the rear land of the Property;

2) based on the description of the Property by both parties and the photographs submitted, the retail portion of the building should be classified as average quality rather than good quality as assessed by the Town; making the appropriate adjustments from the 1986 Marshall Valuation Service Manual results in a total replacement cost of the building of $986,850; and

3) the building should receive 10% functional depreciation to account for the size of the building, the visibility and access of the office space, and the unrentable common area in the building.

No further adjustment is warranted for the following reasons:

1) The board is unable to give substantial weight to the Taxpayer's market and income approaches to value because: (a) in the market approach, locational adjustments were quite subjective and not based on analysis of rents and other market data from which quantitative locational adjustments could be derived; and (b) the income approach relied on actual income and expenses without any evidence of their representativeness of the general market;

2) The Town improperly granted an exemption to the Property due to one of the tenants being a church. Based on calculating the amount of the exemption, it appears as if 1600 square feet and pro rata share of the land was exempted in 1990 due to the church being a tenant. Owners of property are not eligible for a religious exemption based on a lease to a qualifying organization unless the owners are a qualifying organization under RSA 72:23 (See RSA 72:23 V-a). No evidence was submitted to indicate the owner qualified under RSA 72:23 for an exemption; and

3) The sales submitted by the Town, despite their small size, do indicate the Town's general methodology in appraising offices and commercial property was consistent with the market and thus these sales are given some weight in the board's determination.

If the taxes have been paid, the amount paid on the value in excess of $1,380,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general

reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter of Northeast Property Tax Consultants, Agent for K & R Development, Inc., Taxpayer; and Chairman, Selectmen of Plaistow.

Dated: February 3, 1994

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Valerie B. Lanigan, Clerk

K & R Development, Inc.

v.

Town of Plaistow

Docket No.: 9340-90PT

ORDER

On July 9, 1994 the Taxpayer's "Agent" filed a motion for enforcement of the board's decision of February 3, 1994. The Agent stated that the Town had incorrectly applied the interest on the abatement, had not calculated interest to the date of refund and further, had failed to credit excessive taxes for the full year for the tax year 1993 rather than only for half of the year. The board held a hearing on July 11, 1994. On August 16, 1994 the Agent informed the board that the appropriate interest owed plus half year abatement for 1993 had been paid by the Town. Therefore, the board considers this matter closed.

If there are any outstanding issues to be addressed by the board, the parties must notify the board, in writing, with specificity, within ten (10) days of the date of this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, representative for K & R Development, Taxpayer; and Chairman, Selectmen of Plaistow.

Dated: December 6, 1994

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Valerie B. Lanigan, Clerk