

Union Bay Hill Trust

v.

Town of Derry

Docket No.: 17273-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 adjusted assessment of \$278,900 (land \$35,700; buildings \$243,200) on a .19-acre lot with a 14-unit residential building with 3 commercial spaces (the Property). For the reasons stated below, the appeal for abatement is *** .

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer **carried/failed to carry** this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the property has no on-site parking or room for a dumpster;
- (2) there is a 6000 gallon underground fuel storage tank next to the

foundation that could not be removed without causing structural damage to the building;

(3) the building has an approximate economic remaining life of 3 to 5 years due to the following conditions: little or no insulation, single pane double hung windows, very old ungrounded wiring, an old steam boiler that is hard to balance given the settling of the building, asbestos-wrapped heating pipes, boxed piping in the bathrooms, lead paint exposure, and a substantial termite infestation problem;

(4) the building's layout is inefficient given the extra large hallways;

(5) the Town used inaccurate expense figures and an inappropriate capitalization rate to estimate the Property's value by the income approach; and

(6) lenders are not willing to use the equity in the Property for financing given the Property's overall condition.

The Town argued the assessment was proper because:

(1) the asbestos is not in the tenant areas;

(2) the Property was assessed using the same model as other downtown properties with some adjustments to reflect the condition of the Property;

(3) the Taxpayer refused, despite repeated requests, to supply the Town with actual expense and income data; and

(4) the old downtown area in Derry is a dynamic area, significantly different and improved in 1996 than during the town-wide revaluation in 1993.

Board's Rulings

Based on the evidence, the board finds

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John G. Cronin, Esq., Counsel for Taxpayer; Steven A. Clark, Esq., Counsel for the Town; and Chairman, Selectmen of Derry.

Date: February 19, 1999

Valerie B. Lanigan, Clerk