

Ernest C. Osborn and Karen Burke

v.

Town of Derry

Docket No.: 6311-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$219,400 (land, \$61,600; buildings, \$157,800) on a house on a 54,871-square foot lot (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the assessment card is riddled with inaccuracies;
- (2) the Taxpayers' cost to construct was lower than the Town's costs figures; and
- (3) the Taxpayers listed the Property in 1985 to 1987 for \$190,000 with no offers.

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The Town submitted an appraisal report which included estimates of value by the cost and market approaches and an assessment comparison of comparable properties.

The Town argued the assessment was proper because:

- (1) they have been unable to address any inaccuracies in the listing as they have been refused entry to the dwelling; and
- (2) the Taxpayers' comparables are generally smaller and older.

Based on the evidence, we find the correct assessment should be \$200,400 (land \$61,600 and building \$138,800). This assessment is ordered because the board adjusted the house value in two ways:

- 1) graded as a "C", not a "C+"; and
- 2) gave a 5% market adjustment.

Additionally, the Town agreed to deduct \$4,500 for a shed.

The C grade was chosen because, given the photographs and the Taxpayers' testimony, this was an average house. The market adjustment was given because this Property has less market appeal given its style (contemporary cape) and layout.

If the taxes have been paid, the amount paid on the value in excess of \$200,400 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ernest C. Osborn and Karen Burke, taxpayers; and Chairman, Selectmen of Derry.

Dated: June 17, 1992

Valerie B. Lanigan, Clerk

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ORDER

This order relates to the "Taxpayers'" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

Motion denied.

Note:The Town wrote that the order erroneously stated the assessment was \$219,400 when it was actually \$223,900. The order is hereby corrected, but the result remains the same.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I certify that copies of the within Order have this date been mailed, postage prepaid, to Ernest C. Osborn and Karen Burke, Taxpayers; and Chairman, Selectmen of Derry.

Date: August 10, 1992

Valerie B. Lanigan, Clerk

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