John R. Harris and Susan M. Harris
v.
Town of Westmoreland

Docket No. 6407-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $231,200 (land, $57,500; buildings, $173,700) on their real estate on Route 63, consisting of a dwelling on 9.65 acres (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 they were disproportionally assessed.

The Taxpayers argued the assessment was excessive because:

(1) they purchased the Property in August 1985 for $120,000;

(2) the Taxpayers refinanced the Property in January 1987, at which time an appraisal for the mortgage estimated its market value at $165,000;

(3) the garage area is more of a shed type of construction than typical garage construction and should be assessed for $2,621 rather than $21,070;

(4) the Property needs substantial interior and exterior repairs and

renovations;

(5) there is no insulation in the house;

(6) the house should have received an additional 5 percent depreciation for its condition; and

(7) the view factor should be reduced from 1.5 to 1.25 to reflect the obstructed nature of the view.

The Town recommended a revised assessment of $228,500 to recognize additional living area in the el, additional fireplaces, an enclosed porch area (previously listed as living area), and the garage area being equivalent to storage area.

In support of this revised assessment the Town argued the rate of appreciation indicated by the Taxpayers' two appraisals, one in 1985 and one in 1987, if extended to 1989, would indicate a value around $195,000; to which would have to be added the value of the new heating system and brick work done by the Taxpayers.

Based on the evidence, we find the correct assessment should be $214,750 (land $57,500 and building $157,250). This assessment is ordered because:

(1) an additional 5 percent functional depreciation to the Town's revised assessment is warranted for lack of insulation, lack of utility of the third floor apartment, lack of garage doors and good garage floor;

(2) the Taxpayers' appraisals, while not entirely dismissed, are given little weight due to the volatile market from 1985 to 1989; and

(3) the 1.5 view factor is consistent with other similar adjustments

made in town and consistent with the photographic evidence submitted.

If the taxes have been paid, the amount paid on the value in excess of $214,750 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

_ George Twigg, III, Chairman

Paul B. Franklin, Member

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John R. and Susan M. Harris, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Westmoreland.

July 31 1992

Valerie B. Lanigan, Clerk

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