

Joan Durling

v.

Town of Derry

Docket No.: 6930-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$88,900 (land, \$46,000; buildings, \$42,900) on a single family residence on 0.203 of an acre of land on Pierce Avenue (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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) since 1986, the garage has been utilized as a bedroom which is not heated and is accessed by a 6 x 13 breezeway;
- (2) an abutter operates a construction company next door with 14 unregistered vehicles in the driveway and also has cows, pigs, a rooster and chickens on the property;

Joan Durling

v. Town of Derry

Docket No.: 6930-89

Page 2

(3) a hospital and medical office building is located across the street and there is considerable noise from the traffic; and

(4) the lot is not level, the driveway is unpaved and the house has asbestos siding.

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) the assessment is at the low end of what the probable selling price would be in April, 1989;
- (2) the house is of slightly below average construction;
- (3) the market approach indicates the Property is underassessed; and
- (4) the Taxpayer is not bearing a disproportionate share of the tax burden.

Based on the evidence, we find the correct assessment should be \$80,000.

This assessment is ordered because the board finds further economic depreciation than that recognized by the Town is warranted. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

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

Joan Durling

v. Town of Derry

Docket No.: 6930-89

Page 3

\$80,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Joan Durling

v. Town of Derry

Docket No.: 6930-89

Page 4

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joan Durling, taxpayer; and Chairman, Selectmen of Derry.

Dated: June 24, 1992

Valerie B. Lanigan, Clerk

0007