

Paul R. and Mary G. White

v.

Town of Hampstead

Docket No.: 7623-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$149,700 (land, \$68,100; buildings, \$81,600) on a 1.603 acre lot with a one-story duplex (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) there is groundwater contamination on the Property due to gasoline/benzene spill up the road which has permeated the groundwater and well water;
- (2) a March 12, 1990 letter from Plaistow Co-operative Bank advised that neither Plaistow Co-operative Bank or its Secondary Market Banks will loan money on a

property that is not saleable - that a water test, showing no signs of contamination or any hazardous materials causing the Property to be non saleable would have to be produced; and

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(3) a July 27, 1990 appraisal prepared by Capital Appraisal Associates estimated the fair market value of the Property to be \$170,000 and the estimated range of damages caused by the contamination to be between \$51,000 and \$85,000.

The Town's representative, Mr. Greg Heyn of AVITAR, indicated that he had reviewed the situation in regards to the contamination and found that it severely affects the marketability of the Property. He indicated that a 30 percent reduction to the land/contamination and to the building/economic obsolescence is in order but was not approved by the Town. This recommendation was based on Mr. Heyn's experience in regards to contamination in other properties, his reading of surveys and articles addressing the problem and was considered to be a sound judgment from the standpoint of an appraiser.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$104,800 (land \$47,700 and building \$57,100). This assessment is ordered because the board finds that the contamination seriously affects the marketability of the Property as substantiated by the Taxpayers' appraisal report and the testimony of Mr. Heyn.

If the taxes have been paid, the amount paid on the value in excess of \$104,800 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

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George Twigg, III, Chairman

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul R. and Mary G. White, Taxpayers; and Chairman, Selectmen of Hampstead.

Dated: October 5, 1992

Melanie J. Ekstrom, Deputy Clerk

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