

Richard K. and Joan Bossart

v.

Town of Merrimack

Docket No.: 7693-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$193,600 (land \$59,500; buildings \$134,100) on a .9-acre lot with a gambrel-style house (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 should only be what someone would pay for the Property;
- (2) comparable properties were assessed at \$100,000, \$106,000, and \$120,800 and a much larger gambrel was assessed for only \$136,000;
- (3) the per-square-foot price is much higher than the comparables;
- (4) there are discrepancies on the assessment card, i.e., square footage and age of dwelling;

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(5) PSNH has a power-line easement across the Property, resulting in several limitations on the use of the easement area, and also raises concerns about the potential for contracting cancer; and

(6) the assessment should be \$168,989.

The Town argued the assessment was proper because:

(1) the Town used 604 known sales from 1987, 1988 and 1989 and time adjusted the sales to January 1, 1989 and, using multiple-regression analysis, arrived at models to be used in assessing the properties in Town;

(2) the same methodology was used throughout the Town;

(3) all factors must be considered in the assessment, i.e., land, porches, decks, garages, and the Taxpayers only considered the building's living area;

(4) comparable properties sold in October, 1987 for \$156,200, in September, 1987 for \$159,900, in September, 1986 for \$175,000, and in March, 1989 for \$194,286; and

(5) sales showed that power-line easements had no effect on a property's value.

Board's Rulings

Based on the Taxpayers' evidence and the board's experience, the board finds the correct assessment should be \$180,000. 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.)

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The land assessment was adjusted by -10% to reflect the negative impact of the PSNH easement. The Town asserted that no adjustment was warranted, but the Town did not submit any data to support that conclusion. Common sense indicates that if you had two identical properties but one had the PSNH easement on it, the property with the easement would sell for less. Therefore, the board adjusted the land assessment. The board used a -10% figure based on the so-called "4-3-2-1 principal." This principal, simply stated, estimates that the value of land decreases as one moves away from the road frontage, resulting in only 10% of the land value being on the back portion of the lot.

After making the adjustment for the power easement, the board looked at the Taxpayers' and the Town's comparables and concluded the Property was worth approximately \$180,000 in 1989.

If the taxes have been paid, the amount paid on the value in excess of \$180,000 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

Ignatius MacLellan, Esq., Member

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 Richard K. and Joan Bossart, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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