

George W. and Theresa Paiva

v.

Town of Merrimack

Docket No.: 7772-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$123,600 (land \$52,300; buildings \$71,300) on a .46-acre lot with a ranch 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 building has central heating and air but they are not functional and would cost \$1,000 to repair;
- (2) the downstairs is unheated and unfinished;
- (3) the Property is a corner lot on a busy highway, and 3,000 vehicles pass the Property daily;
- (4) the duplex that abuts the Property directly affects the value;

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(5) the Town's comparables have more privacy, less traffic, and have no duplexes abutting them;

(6) the Property does not have a recreation room; and

(7) the assessed value should be \$105,000.

The Town argued the assessment was proper because:

(1) the \$123,600 assessment is at the lower end of the sales at the time of the revaluation -- this reflects the "busy corner" influence;

(2) the Property has a recreation room in the basement;

(3) 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; and

(4) the same methodology was used throughout the Town.

Based on the evidence, we find the correct assessment should be \$117,000. 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.) This assessment is ordered because further adjustment is required to reflect the negative impacts of the busy corner location -- unlike many of the Town's comparables.

If the taxes have been paid, the amount paid on the value in excess of \$117,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George W. and Theresa Paiva, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 11, 1993

Valerie B. Lanigan, Clerk

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