

Polly Belanger

v.

Town of Merrimack

Docket No.: 7784-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$124,900 (land \$88,800; buildings \$36,100) on a .15-acre lot with a cottage (the Property). The Taxpayer owns, but did not appeal, Map 3C, Lot 025-2. 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) the camp was built in 1943 and the interior is unfinished, i.e., no ceilings, bedrooms, or heating system, and there are no town services;
- (2) the dwelling has a full basement, but it is not finished;
- (3) the comparables are all newer than the camp, and are all year-round residences where the camp is only seasonal;

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- (4) there is a 100' x 16' right-of-way along the sideline of the subject lot for emergency vehicles and five neighboring backlots have deeded water access;
- (6) the land is ledgy, and there is no beach; and
- (7) the assessed value should be \$90,000.

The Town argued the assessment was proper because:

- (1) the lot is private except for visitors and the deeded, water-access neighbors;
- (2) the Property is on the lake with an excellent view;
- (3) the age and condition of the dwelling are addressed in the D grading assessed by the Town;
- (4) 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
- (5) the same methodology was used throughout the Town.

Based on the evidence, we find the correct assessment should be \$112,000. 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 the Town failed to make an adjustment for the diminution of value to the subject Property as a result of the five backlots with rights-of-way to the water.

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If the taxes have been paid, the amount paid on the value in excess of \$112,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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 Polly Belanger, Taxpayer; and Office of the Assessor of Merrimack.

Dated: February 11, 1993

Valerie B. Lanigan, Clerk