

**Ruth and William P. Robertson**

**v.**

**Town of Merrimack**

**Docket Nos.: 7793-89, 8376-90 and 11719-91**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989, 1990 and 1991 assessments of \$197,000 (land, \$110,000; buildings, \$87,000) on Map 6D-1, Lot 029, Ruthie's Postal Parlor Restaurant, with a .25-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were 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 assessments were excessive because:

- (1) the land assessment was excessive because the lot is nonconforming;
- (2) the building assessment was excessive compared to Marshall and Swift;
- (3) an income analysis demonstrated a \$94,364 value; and
- (4) 1990-91 commercial sales show commercial values have fallen faster than other values in the Town.

Ruth And William P. Robertson

v.

Town of Merrimack

Docket Nos.: 7793-89, 8376-90 and 11719-91PT

Page 2

The Town argued the assessments were proper because:

- (1) the Taxpayers' ratio studies were statistically flawed, the bank sales do not represent market value, and to use a different ratio would be inequitable;
- (2) the Taxpayers' income approach was flawed;
- (3) they were based on income/costs models derived from market data collected during the revaluation; and
- (4) the land value was derived from sales collected and analyzed during the revaluation.

### **Board's Rulings**

Based on the evidence, we find the correct assessment should be \$167,450. 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:

- (1) the Town failed to adjust the assessments for the on-site parking problem;
- (2) the \$14/sf rent was excessive given the Property's type and condition and given the rents stated in the rent survey and in the Taxpayers' report;
- (3) the board saw the Property on the view, and given the board's experience, the

Ruth And William P. Robertson

v.

Town of Merrimack

Docket Nos.: 7793-89, 8376-90 and 11719-91PT

Page 3

assessments were excessive; and

(4) the board reduced the assessments by -15% to reflect the above issues.

The board rejects the Taxpayers' ratios studies, finding them inadequate to warrant acceptance. In particular, the use of unadjusted bank sales is not consistent with sound assessing practice.

If the taxes have been paid, the amount paid on the value in excess of \$167,450 for each year 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

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Ignatius MacLellan, Esq., Member

#### CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Northeast Property Tax Consultants, Representative for the Taxpayers; Office of the Assessor of Merrimack; and Jay L. Hodes, Esq., Representative for the Town.

Dated: January 22, 1993  
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Valerie B. Lanigan, Clerk