

Randy D. and Catherine J. Caswell

v.

Town of Merrimack

Docket No.: 7796-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$170,100 (land \$51,700; buildings \$118,400) on a .347-acre lot with a garrison-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 Property was purchased in July, 1989 for \$151,500;
- (2) the assessment was \$26,000 higher than all the neighbors, yet those properties are larger;
- (3) a June, 1989 appraisal estimated a \$154,000-\$156,000 value;
- (4) the Property could not be sold for the assessed value;

(5) a drainage easement on the Property caused substantial damage to the dwelling, resulting in the loss of 40 trees and \$4,000 in out-of-pocket expenses for repairs;

(6) the Property has poor topography; and

(7) the assessed value should be \$154,000.

The Town recommended a 10% reduction, resulting in an assessment of \$153,090. The Town argued the revised 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; and

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

Board's Rulings

Based on the evidence, we find the correct assessment should be \$153,090. This assessment is ordered because the evidence was uncontroverted that the Property had significant drainage problems that were not reflected in the assessment. Therefore, the board agrees with the Town's recommendation and reduces the total assessment by -10%.

Whenever the board grants an appeal because of clerical error or plain and clear error of fact, and not interpretation, RSA 76:7-a authorizes the board to order the Town to reimburse the Taxpayers' filing fee. The board finds such an order is appropriate, and the Town is ordered to reimburse, within ten (10) days of the clerk's date, the Taxpayers' \$40 filing fee.

If the taxes have been paid, the amount paid on the value in excess of \$153,090 shall be refunded with interest at six percent per annum from date

paid to refund date. RSA 76:17-a.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Randy D. and Catherine J. Caswell, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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