

Richard C. and Joyce A. Foulks

v.

Town of Merrimack

Docket No.: 7803-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$160,400 (land \$57,600; buildings \$102,800) on a .514-acre lot with a gambrel 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 proximity to the Everett Turnpike and the new access ramp to the highway have a negative impact on the Property;
- (2) the traffic is extremely heavy, and the noise and pollution are detrimental;
- (3) the Property is on a dead-end street and is a natural drainage for the neighborhood;

- (4) the average assessment in the neighborhood is \$130,000; and
- (5) the assessment should be \$121,000.

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) the neighboring properties are assessed lower for many reasons, including square footage, acreage, and living space; and
- (4) there was no market data showing an adjustment was required for the Property's location near the highway.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$144,360 (land \$51,840; building \$92,520). To arrive at a proper assessment, the Town should have considered all factors that would affect the property's value. See Paras v. Portsmouth, 115 N.H. 63, 67-68 (1975). Without a doubt, the Property's location -- very close to the highway and the highway tollbooth -- would have an adverse affect on the Property's value. However, the Town admitted it had made no adjustment for this problem. The board, therefore, has made a -10% adjustment to reflect the locational problem. The Taxpayers requested an abatement to \$121,000, and the Taxpayers' request may be reasonable and proportional. Unfortunately, the Taxpayers did not present sufficient market data or comparative assessment data to enable the board to make a more significant downward adjustment.

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If the taxes have been paid, the amount paid on the value in excess of \$144,360 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

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard C. and Joyce A. Foulks, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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