

Homestead Properties/Donald Gonville/Robert C. Rubin

v.

Town of Merrimack

Docket No.: 7808-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$1,045,300 (land \$456,300; buildings \$589,000) on a 27.5-acre lot with three, identical two-story buildings (the Property). The Taxpayers also owned, but did not appeal, a property identified as map 5C, lot 602, assessed at \$144,800. 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 is located on the "wrong side of town";
- (2) the Property abuts wetland, is located on severe soils, and is not serviced by public sewer;

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- (3) the additional land has such severe soil limitations that a variance would have to be obtained for further multi-unit buildings;
- (4) four of the six septic systems were failing in 1989 and the systems had to be pumped on a frequent basis;
- (5) some of the units were not rentable due to the limitations of the septic systems;
- (6) public sewer did not service the Property until 1991, but the cost to install a pump-up system to connect to the sewer was exorbitant;
- (7) the buildings are 17-years old, have electric heat, and the original roofing; and
- (8) the assessment equates to \$58,000 per unit when most apartment complexes were selling in the \$35,000 to \$40,000 range.

The Town argued the assessment was proper because:

- (1) there are other multi-unit complexes on this side of town;
- (2) the \$25,350 estimated land value per-unit for the Property is in line with land values per-unit for condominiums (Exhibit TN-L);
- (3) the Taxpayers did not submit any evidence other than testimony as to the deficiencies of the Property; and
- (4) the same methodology was used throughout the Town.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$810,250. This assessment is ordered because the board has reduced the value on the Property's residual land to \$71,250, which was added to the Town's income value of \$739,000. The board has reduced the residual-land value for

two reasons. First, the Taxpayers testified 18 acres was specifically
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dedicated to the 18 units based upon the approvals obtained when the units
were constructed. Moreover, even if developable, the soil conditions limit
the land's utility. Therefore, taking the total acreage of 27.5 less the 18
acres results in 9.5 residual acres with 2.5 being wetlands and the remaining
7 being assessed as residual land.

Excess Land Calculation

27.5 acres
- 18 acres
9.5 acres

2.5 acres wetland 2.5 x \$500 = \$ 1,250
7 acres residual 7 x 10,000 = \$70,000
\$71,250

The second reason for the board's conclusion is the Town's failure to
demonstrate the validity of its residual-land methodology. While it is true
that the Taxpayers have the burden to prove the assessment was incorrect, it
is also true that the Town, in the first instance, must conduct a valid
assessment. We find the Town, in this case, failed to do so. Specifically,
the Town did not make any real investigation into whether the residual land
had sufficient utility to justify the original \$306,250 value. For example,
the Town apparently did not consider the severe soil condition, the zoning, or
the required dedication of one acre per-unit.

The board finds the Taxpayers did not produce sufficient evidence to
warrant any further adjustments. Most importantly, the Taxpayers failed to
establish a market-value benchmark from which the board could make
adjustments. Therefore, the board adjusted the assessment based on an error.

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If the taxes have been paid, the amount paid on the value in excess of \$810,250 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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Donald Gonville and Robert C. Rubin, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk