

Donald and Margaret McDermott

v.

Town of Merrimack

Docket No.: 7818-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$148,700 (land \$56,900; buildings \$91,800) on a 1.373-acre lot with a ranch 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) 4 of the Town's 5 comparables are on Cota Road, a different neighborhood than the Taxpayers;
- (2) the comparables are all newer;
- (3) the property across the street at 7 Morningside Avenue sold for \$137,000, was assessed at \$140,500, and yet had superior modifications made to it and a private view;

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- (4) the Property should be assessed between \$136,900 and \$139,900;
- (5) the fire department had to pump the basement after flooding;
- (6) the Property is very low and collects the rain/water drainoff from the road; and
- (7) the roof leaks, and one of the bedroom ceilings is falling in.

The Town argued the assessment was proper because:

- (1) three attempts were made to inspect the interior of the Property;
- (2) the Property was given a C grading;
- (3) 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
- (4) the same methodology was used throughout the Town.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$136,000.

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: (1) the Taxpayers' comparable at 7 Morningside Avenue is some evidence of market value; (2) the Town had been unable to inspect and list the interior of the dwelling; and (3) the Town was

unable to adequately explain how the differences between the Taxpayers'
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Property and the Town's comparables were adjusted to arrive at the assessed value.

If the taxes have been paid, the amount paid on the value in excess of \$136,000 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 Donald and Margaret McDermott, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk