

Roland R. and Valerie A. Richard

v.

Town of Merrimack

Docket No.: 7827-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$196,800 (land \$89,700; buildings \$107,100) on a .250-acre lot with a saltbox house (the Property). The Taxpayers own, but did not appeal, another parcel in the Town. 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 land assessment went from \$10,270 to \$87,900 in one year;
- (2) a realtor gave a \$30,000 estimated value as vacant land;
- (3) the abutting lot sold for \$75,000 in December, 1992, and another property was assessed at \$110,400 but sold for \$59,500 in 1991;
- (4) if the Property was an acre, the assessment would be \$300,000, which is

unrealistic;

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(5) the Property is not level, and it drops from the house straight to the lake;

(6) the Property was under construction on April 1, 1989; and

(7) all the properties in the Taxpayers' neighborhood were assessed generally the same, despite the differences in property.

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; and

(3) vacant, 1/2-acre, lake-front lots have sold anywhere from \$70,700 to \$106,000 in 1987.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$175,300 (land \$89,700; building \$85,600). This assessment is ordered because the evidence indicated that as of April 1, 1989, the building was approximately 20% incomplete. This conclusion is based on the Taxpayers' testimony, including the testimony that approximately \$15,000 to \$20,000 of work was left to be done. Additionally, the assessment-record card indicated the Property was inspected on April 1, 1989, and the review inspector noted the building was still only 80% complete. Despite this clear evidence, the Town made no adjustment for this problem.

The Taxpayers focused their challenge on the land value, but they did

not submit any evidence to support finding an error in the land value.

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Additionally, the Town submitted land sales to support the land assessment.

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 \$175,300 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 Roland R. and Valerie A. Richard, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk