

SAD Development

v.

Town of Merrimack

Docket Nos.: 7829-89, 9803-90 and 11631-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989, 1990 and 1991 assessments of \$847,400 (land, \$237,500; buildings, \$609,900) on Map 3D-2, Lot 036, La-Z-Boy Showcase, with a .873-acre lot (the Property). (Only the land value was assessed in 1989.) For the reasons stated below, the appeals for abatement are granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) the Town's income approach was flawed;
- (2) the value by the income approach should be \$523,100;
- (3) the assessment exceeded the land acquisition price and the construction costs (\$591,000 being the actual total);
- (4) the Town used an incorrect lot size (the lot is .873 acres); and

SAD Development

v.

Town of Merrimack

Docket Nos.: 7829-89, 9803-90 and 11631-91PT

Page 2

(5) the correct assessments should be \$225,000 (1989), \$523,100 (1990) and \$444,600 (1991).

The Town argued the assessments were proper because:

- (1) the land purchase price did not include the required site work, which work included substantial fill;
- (2) it was based on income/costs models derived from market data collected during the revaluation; and
- (3) the land value was derived from sales collected and analyzed during the revaluation.

Board's Rulings

Based on the evidence, we find the correct assessments should be \$225,000 (1989) and \$591,000 (1990 and 1991). The best evidence available was the Taxpayer's actual land (1989) and building (1990) costs of \$591,000. See Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988) (price paid is one of the best value indicators). Based on the Taxpayer's information, these values were market derived. Obviously, the Town's cost approach was erroneously beyond acceptance. Additionally, the Town's income approach overvalued the basement space, which should have been valued as storage at \$2.00/s.f. not \$8.00/s.f. The board, however, refuses to adopt the Taxpayer's "corrected" income analysis since we have reservations about the Town's original income analysis.

SAD Development

v.

Town of Merrimack

Docket Nos.: 7829-89, 9803-90 and 11631-91PT

Page 3

The board rejects the Taxpayer's ratios studies, finding them inadequate to warrant acceptance. In particular, the use of unadjusted bank sales is not consistent with sound assessing practice.

SAD Development

v.

Town of Merrimack

Docket Nos.: 7829-89, 9803-90 and 11631-91PT

Page 4

If the taxes have been paid, the amount paid on the value in excess of \$591,000 (1990 and 1991) and \$225,000 (1989) shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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 Taxpayer's 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 Taxpayer's \$40.00 filing fee for 1989, \$40.00 filing fee for 1990 and \$40.00 filing fee for 1991.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Northeast Property Tax Consultants, Representative for the Taxpayer; Office of the Assessor of Merrimack; and Jay L. Hodes, Esq., Representative for the Town.

Dated:
0008

Valerie B. Lanigan, Clerk