Normand J. and Lucille A. St. Francois

v.

Town of Merrimack

Docket No.: 7835-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $155,600 (land $119,000; buildings $36,600) on Map 6A-1, Lot 114, a .40-acre lot with a cottage (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 land assessment was excessive; and

(2) there is a 20-foot-wide drainage easement on the Property for road drainage, resulting in water being drained onto the Property's beach and restricting the lot's use because the easement runs diagonally across the lot.

The Town argued the assessment was proper because:

(1) it was based on market data analyzed during the revaluation;

(2) it was arrived at using the same methodology used throughout the Town; and (3) the Property's value as a whole was proper.

Board's Rulings

Based on the evidence, we find the correct assessment should be $137,750 (land $101,150; building $36,600). This assessment is ordered because the Town failed to make an appropriate adjustment for the adverse impact of the 20-foot-wide drainage easement. The easement has a dual impact: (1) it affects the quality of the Property's waterfrontage; and (2) it limits the owner's ability to utilize the lot since the easement cuts diagonally across the lot. Assessments must take into consideration all factors that would affect value. Paras v. City of Portsmouth, 115 N.H. 63, 67, 68 (1975). The Town, however, made no adjustment for the easement. The easement certainly is a factor that should have been considered, and therefore the board applied a -15% to the land assessment.

If the taxes have been paid, the amount paid on the value in excess of $137,750 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

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Normand J. and Lucille A. St. Francois, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

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Valerie B. Lanigan, Clerk