

**Frank and Virginia Twardosky**

**v.**

**Town of Merrimack**

**Docket No.: 7840-89**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$107,900 (land \$54,600; buildings \$53,300) on a .918-acre lot with a ranch house (the Property). The Taxpayers own, but did not appeal, 3 other properties 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 majority of the land is wet;
- (2) the basement is always wet, and cannot hold storage;
- (3) the building began as a small cottage in 1955 and has repeatedly been added onto, resulting in poor structure and design;

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- (4) the Property was purchased in 1985 for \$50,000 and was an arm's-length transaction; and
- (5) the assessed value should be \$75,000.

The Town argued the assessment was proper because:

- (1) the Property has been graded as poor quality;
- (2) in July, 1988 a comparable property sold for \$117,000;
- (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.

Based on the evidence, we find the correct assessment should be \$90,000.

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 the board finds additional physical and functional depreciation not adequately applied by the Town is warranted.

If the taxes have been paid, the amount paid on the value in excess of \$90,000 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

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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

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank and Virginia Twardosky, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 11, 1993

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Valerie B. Lanigan, Clerk

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