

Josephine Twardosky

v.

Town of Merrimack

Docket No.: 7841-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$153,000 (land \$97,000; buildings \$56,000) on a 4-acre lot with an old-style house (the Property). The Taxpayer owns, but did not appeal, a current-use parcel in the Town. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was 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 assessment was excessive because:

- (1) the farmhouse was built in the 1700's, and trees were used as floor joists;
- (2) the cellar is wet with low headroom;
- (3) the land should be valued \$50,000 for the first acre, and \$5,000 each for the remaining three acres;

- (4) there is no garage; and
- (5) the assessed value should be \$105,000.

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;
- (3) the house lot is the primary lot, and the remaining land was depreciated;
- (4) the \$40,000 secondary lot was considered a buildable lot, and therefore the higher assessment; and
- (5) the building was graded as poor construction.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$126,000 (land \$75,000; building \$ 56,000).

The Town assessed the land as if it had subdivision potential. However, the Taxpayer supplied information showing that given the severe soil the lot could not be subdivided since 100,000 square feet per lot would be required. Therefore, the board has deducted the \$40,000 given to the secondary site and assessed that land at \$5,000.

If the taxes have been paid, the amount paid on the value in excess of \$126,000 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 filing fee.

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 Josephine Twardosky, Taxpayer; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

Josephine Twardosky

v.

Town of Merrimack

Docket No.: 7841-89

ORDER

This order responds to the "Town's" February 26, 1993 letter, requesting clarification concerning the total assessment. The board reviewed the decision and realized the land assessment should have been \$70,000. Thus, the total assessment of \$126,000 was correct allocated as follows: land \$70,000 and building \$56,000.

The land assessment was calculated as follows.

One acre at \$55,000

Three acres at \$5,000/acre.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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Docket No.: 7841-89

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Josephine Twardosky, Taxpayer; and Office of the Assessor of Merrimack.

Dated: March 17, 1993

Valerie B. Lanigan, Clerk

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