

Donald A. and Ha-Minh Weber

v.

Town of Merrimack

Docket No.: 7845-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$222,500 (land \$104,500; buildings \$118,000) on a 2.13-acre lot with a colonial style house (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 Property is the last subdivided, waterfront lot in the Four Seasons Estate development before the land becomes marsh;
- (2) two-thirds of the lot (land along the waterfront) is marshland and bog and the Taxpayers cannot access the waterfront following any rain due to flooding conditions -- this condition is unique to this lot and is not shared by the three lots north of the Property;

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- (3) the drive to the house site is quite steep and is located on a sharp curve;
- (4) the house has electric heat;
- (5) a comparative market analysis (CMA) of the Property estimated its value at \$185,500; and
- (6) the Town's listing of the Property in February, 1989 would not have noted the wetland conditions due to the snow cover and frozen ground.

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) a review of the Property took place in the summer of 1989; and
- (4) no evidence has been given that the value, as adjusted from \$242,800 at the time of the reviews, is excessive.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$210,000. 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: (1) the Taxpayers presented

credible evidence that the Property's water frontage was subject to frequent

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flooding, and differed from other waterfront lots in the neighborhood; (2) the Town's market approach did not adequately adjust for the differing quality of the water frontage; and (3) however, the board finds that no further adjustment is warranted based on the CMA submitted by the Taxpayers because the board finds that the comparables used by the realtor in the CMA did not accurately reflect the Property's location and value.

If the taxes have been paid, the amount paid on the value in excess of \$210,000 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

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gregory E. Michael, Representative for the Taxpayers; and Board of Assessors of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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