

George J. and Pauline P. Ehrman

v.

Town of Merrimack

Docket No.: 7855-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$151,800 (land \$59,800; buildings \$92,000) on a .95-acre lot with a ranch 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 backs up to wetlands, has severe drainage, and severe soil;
- (2) 2-4 times per year, for 2-3 weeks at a time, the basement has standing water and the house is surrounded by 6 inches of water;
- (3) the comparables in the neighborhood are larger and newer, but are taxed less;
- (4) the Property's replacement cost is \$13,000 more than the comparables;

- (5) there are errors on the assessment card, i.e., the wrong measurements;
- (6) a realtor estimated a \$125,000 market value after a new leach field was installed and Numerica Savings Bank estimated the same value for a closing;
- (7) an above-ground leach field had to be installed for \$7,000 and 40-50 trees had to be felled;
- (8) larger homes are selling for an average of \$150,000; and
- (9) the assessed value should be \$130,000.

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 Property was inspected twice and the water problem appeared to be only temporary;
- (4) one of the Taxpayers' comparables sold for \$149,000 in 1988 and the other sold for \$155,000 in 1989; and
- (5) with the septic-system problem being only temporary no adjustments were warranted.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$144,200. This assessment is ordered because the Taxpayers presented credible evidence concerning the problems with the wetlands, especially their effect on the Property's septic system. Specifically, the Taxpayers testified that in 1989, they knew the septic system needed to be replaced. The system was

eventually replaced in 1990 for \$7,000. The Town is incorrect in its

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assumption that correctable problems do not warrant any adjustment.

Certainly, major repairs, e.g., new septic, require some adjustment. After adjusting for the wetlands issue (-5% off the land and the building), the board looked at the Town's comparables and concluded the adjusted assessment was now in line with other assessments in the Town.

If the taxes have been paid, the amount paid on the value in excess of \$144,200 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

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 George J. and Pauline P. Ehrman, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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