

**Stephen P. and Ghislaine K. Kalenik**

**v.**

**Town of Merrimack**

**Docket No.: 7858-89**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$205,000 (land \$64,200; buildings \$140,800) on a 1.837-acre lot with a gambrel 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) a comparison to the adjacent house would support a proper assessment of \$196,000;
- (2) the Town did not adjust for the loss in space of living area on the second floor due to the gambrel style; and
- (3) the Property was purchased in April 1987 for \$205,000 which included \$4,500 in change orders that do not materially increase the Property's value.

The Town argued the assessment was proper because:

- (1) the Taxpayer paid \$204,000 for the Property in 1987 and, even assuming that it was purchased at the peak of the market, the assessment is proper for 1989;
- (2) 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
- (3) the same methodology was used throughout the Town.

#### Board's Rulings

Based on the evidence, we find the correct assessment should be \$201,000.

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 board finds the Taxpayers' purchase of the Property in 1987 for \$205,000 minus the \$4,500 in change orders is some evidence of the market value; (2) the Town's market estimate of \$202,000, while not relied upon for their assessment, is also some evidence of market value; and (3) the board gives equal weight to the Taxpayers' purchase and the Town's market-value estimate.

If the taxes have been paid, the amount paid on the value in excess of \$201,000 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

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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 Stephen P. and Ghislaine K. Kalenik, Taxpayers; and Chairman, Board of Assessors of Merrimack.

Dated: February 22, 1993

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Valerie B. Lanigan, Clerk