

Natalie E. and James G. Maloof, Jr.

v.

Town of Merrimack

Docket No.: 7860-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$254,000 (land \$76,000; buildings \$178,000) on a 5.192-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) the living room has a cathedral ceiling area, thus 280 square feet on the second story is not living area;
- (2) the house is graded as a B+ while neighboring properties of similar quality are graded lower -- the house is decorated tastefully but should not be assessed for that;

- (3) the majority of the neighborhood consists of properties averaging \$150,000, which negatively impacts higher-valued houses;
- (4) the land-acquisition costs and the improvement's construction costs in 1985 and 1986 totaled approximately \$199,000; and
- (5) the Property should be assessed for \$199,000.

The Town argued the assessment was proper because:

- (1) the Town used the market approach to value the Property, which compensates the amount of second-floor living area in a gambrel house -- additionally, the additional cost for framing in a gambrel house offsets any loss in living area;
- (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 \$236,200 (land \$76,000; building \$160,200). This assessment is ordered because: (1) the grade of the dwelling as a B+ is excessive for the description and photographic evidence submitted to the board; (2) if the grade factor had been lowered more in line with other properties in the area, the Town's market approach to valuation would likely have been less due to the computer's choice of sales with lower-quality dwellings; (3) the neighborhood in which the Taxpayers are located is of generally less-valuable properties, which in itself would have a negative affect on the Taxpayers' value; (4) the board

finds that a -10% adjustment on the building value adequately reflects the

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above listed factors; and (5) no further abatement is warranted based on the Taxpayers' acquisition and construction costs because: (a) those figures were for an earlier time period and not applicable without adjustment to the 1989 tax year; and (b) the Taxpayers' lot is larger than most in the neighborhood and has been improved for horse pasture.

If the taxes have been paid, the amount paid on the value in excess of \$236,200 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

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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 Natalie E. and James G. Maloof, Jr., Taxpayers; and Board of Assessors of Merrimack.

Dated: February 22, 1993

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Valerie B. Lanigan, Clerk