

Dean and Joy Francisco Sena

v.

Town of Merrimack

Docket No.: 7866-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$194,600 (land \$161,000; buildings \$33,600) on a .2-acre lot with a ranch-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 lot cannot support a commercial business and variances would be required for the Taxpayers to conduct even a limited business, and even though the Town will not approve a commercial business or let the Taxpayers advertise, solicit potential customers, have any employees, or conduct any business, the Town assessed the Property a nonconforming lot in a limited commercial zone;

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- (3) the Property's access is off a side street not the D.W. Highway;
- (4) a March, 1987 appraisal estimated a \$90,000 value and a May, 1988 appraisal estimated a \$119,000 value;
- (5) the Property was purchased May 26, 1987 for \$80,000;
- (6) a neighboring property with twice the lot size has an assessment of \$113,000; and
- (7) the assessed value should be \$120,000.

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; and
- (3) the Property has commercial potential and the Taxpayers currently run a business from the Property.

#### **Board's Rulings**

Based on the evidence, we find the correct assessment should be \$156,000.

The question here is whether the Property should be assessed as residential property, residential property with limited commercial value (e.g., home occupation) or residential property with significant potential commercial value. If the Property is assessed as residential property, it would be assessed at approximately \$125,000. The \$194,600 assessment assumes the Property has significant commercial value. The board finds the Property is primarily a residence with some secondary commercial value. As shown by

the Taxpayers, this very small lot located in an area with some residential

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properties is already encumbered with a building and cannot support a significant commercial establishment. Moreover, any commercial use would require Town approval and modifications to the Property. Therefore, we find the Town overvalued the commercial aspects of this Property. However, we also reject the Taxpayers' contention that this should simply be assessed as a residential property. The Property is located on a busy highway and the zoning (limited commercial) would permit commercial use, e.g., professional office space. The board looked at the Town's comparables and the Taxpayers' evidence and concluded a \$156,000 (\$125,000 x 1.25 for commercial value) value would be appropriate, reflecting the Property's primary residential value and secondary commercial value.

If the taxes have been paid, the amount paid on the value in excess of \$156,000 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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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Dean and Joy Francisco Sena, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

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Valerie B. Lanigan, Clerk

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