

Joseph M. and Linda Foley

v.

Town of Epping

Docket No.: 10714-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$162,700 (land - \$56,800; buildings - \$105,900) on a single-family house on a 1-acre lot on Hedding Road (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 assessment card had numerous errors, e.g. foundation square footage is wrong and there is no adjustment for the unfinished basement;

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2) the Property is near a busy intersection warranting a reduction in both the building and land;

3) the land is classified as residential but is next to an apartment complex and across the street from a trucking company;

4) the Property's proximity to the dump results in increased traffic, windblown trash on the lawn and the smell of smoke; and

5) the house has many physical problems, e.g., it sags in the middle; has crooked floors, walls and ceilings; bulging walls in the basement; flooding in basement; and poor construction in the floor joists.

The Town agreed to reduce the land assessment by \$1,100 due to the traffic. The Town argued the adjusted assessment was proper because:

1) even though there are minor flaws in the property tax card, the assessment was still fair and proportionate;

2) the basement's dimensions are exterior and included the foundation's value;

3) a deduction was given for the dirt basement and wetness equal to 50 percent of the basement value; and

4) the unit price of \$1.26 per-square foot was the price for lots throughout the Town.

The board's inspector reviewed the file and property tax card and filed a report with the board. This report concluded the proper assessment should be \$140,650 (land \$55,700; buildings \$84,950). The inspector graded the house an average +5 with additional physical depreciation. The inspector concluded these adjustments were required due to the physical condition of the house,

including the basement and floor joists.

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Board's Rulings

Based on the evidence, we find the Taxpayers proved the Property's assessment was disproportional and order an assessment of \$140,650 (land \$55,700; buildings \$84,950).

The Taxpayers' photographs demonstrated that while the exterior appears average +10, the interior is at best average +5. The features such as the doors, the kitchen and the bathroom are all average or below. Moreover, the "old charm" of this house appears to have been destroyed with renovations, leaving an old house without the "old charm." Therefore, we accept the inspector's report as the best evidence. We also find the Town adequately addressed the Taxpayers' other arguments.

We note, however, that the Town failed to submit any sales to support the assessment. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

If the taxes have been paid, the amount paid on the value in excess of \$140,650 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The

motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph M. and Linda Foley, Taxpayers, and Chairman, Selectmen of the Town of Epping.

Dated: December 1, 1992

Melanie J. Ekstrom, Deputy Clerk