

Peter-Sam Investment Properties

v.

Town of Merrimack

Docket Nos.: 7596-89, 8152-90 and 11306-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989, 1990 and 1991 assessments of \$2,310,200 (land only) on Map 3B, Lot 164, a 496.752 acre lot, and \$284,100 (land only) on Map 3B, Lot 260, a 50.339 acre lot (the Property). The Taxpayer owns, but did not appeal, fifteen (15) other land only parcels in the Town of Merrimack. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessments were excessive because:

- (1) the Property has limited access for its size with 1,500 feet of frontage on Naticook Road and 500 feet of frontage on Amherst Road;
- (2) the Town has underestimated the acreage classified as wetlands -

approximately 121 acres or 22 percent of the tract area is classified as wetlands;

(3) approximately 22 acres or an additional 4 percent of the total tract area has steep slopes (greater than 25 percent);

(4) the development potential of the Property is severely limited by the predominant soil types which present moderate and severe limitations to the placement of septic tanks and leach fields except on larger lots of two acres or more;

(5) the Property is encumbered by a 170-foot wide power line easement to the Public Service Company of New Hampshire;

(6) the Property is constrained by Town zoning and subdivision regulations governing the use and development of the Property, the soil-based zoning requirements control the minimum lot size for potential residential development according to categories for various soil types, and subdivision regulations specify the maximum cul-de-sac length permitted within residential subdivisions is 1,200 feet which poses a significant impact to the development of the Property;

(7) the \$5,000 residual acreage value assigned by the Town is not applicable to the Property due to its size and constraints;

(8) the acreage shown by the Town for marshland should be changed to reflect actual site conditions and, therefore, the amount of residual acreage should be adjusted;

(9) land beyond reach of and serviceable by the 1200-foot cul-de-sac should

be assessed at a lower value due to the size of the Property and the up-front costs required for future development; and
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(10) a recommended assessment of \$1,333,635 is fair and equitable.

The Town argued the assessments were proper because:

- (1) the Property was appraised in 1979 for \$1,000,000 for the purpose of offering it for sale to the Town;
- (2) the assessments equate to an overall per-acre value of \$4,250 which is not inappropriate for raw, running acres;
- (3) from 1986 to 1989, no land has sold in the Town for less than \$8,000 or \$9,000 per acre; and
- (4) the assessment is fair and equitable.

Board's Rulings

The board finds the Taxpayer's case unconvincing for the information and evidence which was either not supplied or which was so speculative as to deserve little or no weight. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Taxpayer had no test pits dug on the subject Property to support the claim of limited or severely restricted potential for development, (see Taxpayer's argument #4). No survey of the subject Property had been performed

and no estimate of development costs were submitted, (see Taxpayer's argument #6).

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The Town introduced exhibit M, which is a copy of an appraisal of the subject Property as of January 29, 1979, in the amount of \$1,000,000 for 500 acres. This appraisal is based on a rounded 500 useable acres at \$2,000 per acre which includes a 10% deduction for wet or ledgy portions. According to the Town's tax map the subject Property under appeal totals 547.091 acres, (496.752 + 50.339 acres). The Taxpayer offered the subject Property to the Town in 1979 for \$1,000,000 for use as a park.

According to the Taxpayer, the 1979 appraisal appears flawed by virtue of 10% wetlands (estimated), while aerial photos and coloration interpretation would indicate closer to 22% wetland. The board gave little or no weight to the 1979 appraisal because of its age and erroneous information (10+ years). The tax years under appeal are 1989, 1990 and 1991 and the Taxpayer presented no appraisal reports to support its contention of the Property's fair market value.

The Town underscored the fact that no land in the Town of Merrimack sold for as little as \$1,500 per acre and the overall average of \$4,250 per acre is not out of line or disproportionate.

The board finds the economy of scale of these large undeveloped parcels to be reasonably and appropriately reflected in the Town's \$4,250 per acre unit value and therefore rules the Taxpayer has failed to meet its burden of proof to show disproportionality. We also find the Town supported the

Property's assessments.

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

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generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gary M. Stern, Representative for the Taxpayer; Dominic D'Antoni, Office of the Assessor of Merrimack; and Jay L. Hodes, Esq., legal counsel for the Town.

Dated: January 11, 1994

Valerie B. Lanigan, Clerk

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ORDER

This order relates to the "Taxpayer's" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

I certify that copies of the within Order have this date been mailed, postage prepaid, to Gary M. Stern; Jay L. Hodes, Esq. and Dominic D'Antoni, Assessor.

Valerie B. Lanigan, Clerk

Date: January 28, 1994

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Peter Sam Investment Properties

v.

Town of Merrimack

Docket Nos.: 7596-89, 8152-90 and 11306-91PT

ORDER

This order relates to the Taxpayer's rebuttal to the Town's objection to the Taxpayer's motion for rehearing (January 28, 1994).

No mention was made to lowering value across the board in 1993 at the original hearing.

The action taken by the Town in 1993 of lowering assessments across the board has no bearing on any alleged disproportionality for earlier tax years, but rather is an attempt to correct the equalization ratio.

This is the last response which the board will make in reference to its decision in the above captioned property tax matter. The board's order of January 28, 1994 stands.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

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CERTIFICATION

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Date:

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Valerie B. Lanigan, Clerk