

Hattie M. and Ernest A. Rzeznik, Jr.

v.

Town of Merrimack

Docket No.: 7727-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$147,800 (land \$69,800; buildings \$78,000) on a 4.6-acre lot with a ranch-style house (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to prove disproportionality.

The Taxpayers argued the residual 3.6-acre assessment was excessive because:

- (1) they were told marshland is worth \$500 per acre, but theirs is assessed at \$5,000 per acre;
- (2) the residual-land assessment should be \$1,750;
- (3) the total assessment should be \$131,550;

(4) the Taxpayer's were told they could subdivide at the time of purchase, but now they cannot subdivide as a result of zoning law changes and soil conditions; and

(5) 3 lots that abut the Property are assessed much less than the subject is.

The Town argued the assessment was proper because:

(1) nonbuildable land is assessed at \$5,500 to \$7,000 per acre, which is higher than the Taxpayers' residual land;

(2) the abutting properties are assessed as horticulture with current use;

(3) there is a man-made pond on the Property that holds ducks, and this does not qualify the Property as wetlands;

(4) 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

(5) the same methodology was used throughout the Town.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment. The board finds the Town's total valuation of \$147,800, based on the market approach, to be reasonable. However, the board finds the Town's methodology of allocation between land and building to be misleading, invites appeals, and has the potential for further misunderstandings if wetland is ever put into the current-use program in the future.

Let's examine this further. The Town assumed all the Taxpayers' residual land was of average quality and assessed it at \$5,000 an acre. The

Taxpayers presented good evidence that some of the unimproved residual land

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beyond the one acre, primary site was more akin to the Town's \$500 value for wetland or marshland. If the Town had assessed 2 acres (an estimate of the unimproved wetland) at \$500 an acre and 1.5 acres (an estimate of the improved pond area and its surrounds, the allocation for the land value would have been \$69,000. However, based on the Town's testimony, this allocation would not have had any bearing on the market estimate approach because land quality or size is determined and set independently from the multiple-regression analysis used by the computer which compares only the improvements of comparable properties. Therefore, if the Town had relied on the market estimate with this revised land allocation, they would have had a value of \$69,000 for the land and \$81,700 for the improvements. Further, it is interesting to note that the cost approach, which the Town did not rely upon but did calculate, would have been very close to the market approach estimate if this proper allocation of land value had taken place. Specifically, the land value would have been \$69,000 and the improvement value under the cost approach was calculated at \$81,700 for a total of \$150,700, only \$2,900 different than the market approach value.

The board believes the Town's somewhat cavalier attitude towards valuing residual land when they are relying on the market approach with a multiple-regression analysis is blind to the complications that could arise if Taxpayers, such as the one in this case, apply for current use assessment on their residential land under the wetlands category. The Town then would be faced with reducing the land assessment from an arbitrarily high value to the

wetlands current-use value.

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While this discourse may be of little consolation to the Taxpayers, the board does share in the concerns expressed by the Taxpayers as to the frustration of understanding an appraisal system that, while it may at times arrive at the right assessment, is not understandable by or accountable to its clients.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Hattie M. and Ernest A. Rzeznik, Jr., Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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