

**Katherine, Shirley and Gordon Schneider**

**v.**

**Town of Merrimack**

**Docket No.: 7832-89**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$193,400 (land, \$119,000; buildings, \$74,400) on Map 6A-1, Lot 115, a .40-acre lot with a cottage-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).

The Taxpayers argued the assessment was excessive because:

- (1) the land on a per-acre basis is assessed at \$297,375 an acre and this is excessive compared to other per-acre assessments;
- (2) the land should not be assessed extra for its view and the lot's topography is similar to nearby lots;
- (3) the runoff from the drainage pipe located on the St. Francois property adversely affects the water frontage;

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(4) the assessment card lists 10% unfinished when the Property was 60% unfinished;

(5) the Property is seasonal with a private, dirt-road access;

(6) the assessment increased dramatically from the prior assessment; and

(7) the total assessment should be \$100,000.

The Town argued the assessment was proper because:

(1) it was based on market data analyzed during the revaluation;

(2) it was arrived at using the same methodology used throughout the Town; and

(3) the Taxpayers' comparables for land assessment are not identical to the Property--Bruno being a vacant, Culliton having more severe topography, and Poliquin having only dirt-road access. The Town stated if the access is the same as Poliquin, the land assessment should be \$90,000.

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

Based on the evidence, we find the correct assessment should be \$164,400 (land \$90,000 and building \$74,400). This assessment is ordered because we conclude the land assessment should be adjusted due to the access problem, which is the same as the Poliquin access.

No further adjustment is warranted because the Town supported the assessment. Moreover, the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should

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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.

Concerning the assessment increases, increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

If the taxes have been paid, the amount paid on the value in excess of \$164,400 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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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Katherine, Shirley and Gordon Schneider, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 12, 1993

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Valerie B. Lanigan, Clerk