

**Paul D. and Janet Tuttle**

**v.**

**Town of Merrimack**

**Docket No.: 7838-89**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$224,800 (land \$81,300; buildings \$143,500) on a 5.25-acre lot with a garrison 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 carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the 4.25-acre, residual land should be classified as wetland as it is in the Baboosic Brook flood plain; and
- (2) the residual land should be assessed at \$500 per acre, not \$5000 per acre.

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;

(3) the land along Twin Brook Road is above grade of the road; and

(4) the market approach, which compared the Property to five comparables mostly of smaller lots, justifies the value despite the flooding of the rear portion of the lot.

#### **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 \$224,800, 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 most of, if not all of, the residual land beyond the one-acre, primary site was more akin to the Town's \$500 value for wetland or marshland. If the Town had assessed the 4.25 acres at \$500 an acre, the allocation for the land value would have been \$62,150. 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

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the Town had relied on the market estimate with this revised land allocation, they would have had a value of \$62,150 for the land and \$162,650 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 \$62,150 and the improvement value under the cost approach was calculated at \$160,200 for a total of \$222,350, only \$2450 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.

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

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul D. and Janet Tuttle, Taxpayers; and Board of Assessors of Merrimack.

Dated: February 22, 1993

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Valerie B. Lanigan, Clerk

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