

Douglas W. and Sherry Draper

v.

Town of Merrimack

Docket Nos.: 7853-89, 8129-90 and 12381-91 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989, 1990, and 1991 assessments of \$133,400 (land \$116,000; buildings \$17,400) on a .10-acre lot with a cottage (the Property). The Taxpayers own, but did not appeal, two land-only parcels ("Lots 149 and 150"). For the reasons stated below, the appeal for abatements are granted.

The Taxpayers have the burden of showing the assessments were 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 assessments were excessive because:

- (1) the Property and Lots 149 and 150 were purchased in 1987 for \$60,000;
- (2) the Property does not have a heating system, well, or septic system -- although a holding tank could be installed if the Property were larger;
- (3) the neighbor's septic system overflows onto the Property;
- (4) an April 1, 1989 appraisal estimated a \$60,000 value;

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(5) the land was assessed disproportional to other larger lots; and

(6) the assessment should be \$60,000.

The Taxpayers submitted seven reports, and the board will not reiterate all the information presented in the reports.

The Town argued the assessments were proper because:

(1) some of the Taxpayers' comparables also had land in Amherst and thus the total assessed values on the comparables were higher when the Amherst land assessment was added to the Merrimack assessment;

(2) the shorefront lots in this area were all assessed using the same methodology with adjustments made for access and land in Amherst; and

(3) the assessment was supported by sales on the lake.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$65,000.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

The board reviewed the evidence submitted by both parties and concluded the Taxpayers clearly carried their burden. Based on the Taxpayers' testimony, installing a septic and well on this Property will be very expensive if it can be done at all. We reject the Town's methodology as it applies to small lots like the Property. We find the Town failed to

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adequately consider the significant adverse impact the lack of septic and well on this small lot has on the Property's value. The Town's assessment of a site value without regard to lot size or utility was an error. We note that the Town's waterfront land sales were for larger lots. The Town did not submit any evidence to justify its position that no adjustment was warranted for a property that lacks septic and well. Given the major problem with the Town's methodology, the board turns to the only other evidence available to it -- the Taxpayers' 1987 purchase price with some time adjustment and the Taxpayers' 1989 appraisal.

Finally, the board notes that while this assessment is a dramatic decrease from the Town's assessment, it is based upon the best evidence submitted to the board. We do not see the ordered assessment as having a domino affect since the Property's problems apparently are somewhat unique.

If the taxes have been paid, the amount paid on the value in excess of \$65,000 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

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Douglas W. and Sherry Draper, Taxpayers; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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