

George A. & Joanne C. May

v.

Town of Merrimack

Docket No.: 12674-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the following 1991 assessments as set by the "Town.":

<u>Map/Lot</u>	<u>Land Assessment</u>	<u>Bldg. Assessment</u>	<u>Total Assessment</u>		
2B/252	\$163,700	\$109,900	\$273,600	- 2 story home on 10.28	acres
2B/261	\$ 64,800	\$ 63,300	\$128,100	- 1 story home on .36	acres
2B/269	\$ 84,200	\$ 32,900	\$117,100	- 1 story home on .2	acres

For the reasons stated below, the appeal for abatements are denied.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry their burden.

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The Taxpayers argued the assessments were excessive because:

Map/Lot 2B/252 - 157 Naticook Rd.

- 1) the lot should be assessed at \$260,000 based on a February 1990 appraisal;
- 2) there are some errors in the Town's assessment such as square footage of living area and amount of basement area;

Map/Lot 2B/261 - 24 Dirt Rd.

- 1) the lot is on Lake Naticook and all waterfront property was assessed unfairly relative to the other property in Town;
- 2) the lot is located on a private road maintained at a cost of approximately \$500 per lot owner and an adjustment for this factor should be made to the assessment;
- 3) a comparative market analysis done by Pat Clancey Realty had sales and listings in the \$125,000 to \$132,000 range, the property was offered to the tenants for \$85,000 but the offered was declined;

Map/Lot 2B/269 - 19 Dirt Rd.

- 1) the lot is on Lake Naticook and all waterfront property was assessed unfairly relative to the other property in Town;
- 2) the lot is located on a private road maintained at a cost of approximately \$500 per lot owner and an adjustment for this factor should be made to the assessment; and
- 3) 19 and 17 Dirt Rd. were purchased jointly in March 1990 for \$70,000 while the combined assessment was \$119,000; the sale occurred after a purchase and sales agreement for \$81,000 between other parties failed; the purchase price is reflective of market value and should be considered as the basis for the assessment.

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The Town argued the assessments were proper because in general the

Taxpayers' evidence presented with the abatement request was not conclusive of overassessment.

Specifically, the Town argued the Property at 157 Naticook Road was properly assessed because the Taxpayers' appraisal when equalized by the 1990 ratio (the year of the Taxpayers' appraisal) supports the assessment. The Property at 24 Dirt Road was properly assessed because the realtor's comparative market analysis indicated values in the range of those indicated by the assessment. Lastly, purchase of 19 Dirt Road by the Taxpayers should not be considered reflective of market value because it was purchased from a cousin.

Board's Rulings

We find the Taxpayers did not carry their burden in showing the assessments were improper or excessive. The board realizes the Taxpayers' burden can be difficult especially as it relates to Dirt Road properties where there existed very little market data relative to value on Lake Naticook. However, the board finds too many inconsistencies in the Taxpayers' testimony and evidence to find that they have met their burden.

The Taxpayers made a general claim that the two Dirt Road waterfront properties were overassessed relative to the balance of property in Town. The Taxpayers made reference to and the board took official notice of testimony heard earlier in the day in the Wienzek v. Town of Merrimack, Docket No. 12371-91PT case.

As the board found in the Wienzek decision, the Taxpayers' analysis comparing the 1991 and the proposed 1995 assessments of the waterfront properties to a

neighbor's non-waterfront property is not
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conclusive of disproportionality. Such comparative analysis is not tethered to any finding of market value for either year. It strictly shows that there has been a

relative change in the value between the two properties. Such change may be reasonable if the market has changed in those intervening years. However not having any conclusive market evidence of either property in 1991 or in 1995, the board is unable to determine from this type of analysis whether the Taxpayers were disproportionately assessed.

More specifically, the board finds that the Taxpayers' appraisal for \$260,000 for the property at 157 Naticook Road supports the assessment when properly equalized. The Taxpayers made a claim of the square footage of the buildings were inaccurate. However the Taxpayers did not show where the Town's inaccuracies were. The board also notes the building sketch and the estimate of square footage contained in the Taxpayers' appraisal, while being less than that shown on the Property assessment-card, generally support the Town's dimension and square footage calculations. Further, the board finds the evidence does not support the Taxpayers' arguments that the Town did not properly recognize the partial basements with dirt floors and the old heating system. The Town's assessment-record card notes the partial basement areas of the Property and listed the heating system as a forced hot water system. Adjustment for the condition of the heating system is contained in the 40% depreciation given the house.

The market analysis submitted by the Taxpayers on the 24 Dirt Road Property indicates a value range that is supported by the assessment and does not provide a basis for the Taxpayers' testimony of their offer of the Property for \$85,000 to the tenants of the Property. Such a difference in Page 5
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value raises questions as to the Property's value which the Taxpayers was not able to answer.

Similarly, the purchase of the 17 and 19 Dirt Road properties for \$70,000

following a failed purchase and sales agreement for \$81,000 raises questions about the assessment. However, the fact that the sale was from a cousin of the Taxpayers' raises concerns whether the transaction is reflective of market value. Further, the Taxpayers stated the property was purchased in March of 1990 and that the \$50,000 renovations started in 1991 and finished in 1992. Therefore, while the Property may have been uninhabitable due to construction work as of April 1, 1991, some improvements had been started which would have increased the value of the Property as of April 1, 1991.

In short the board finds too many uncertainties and inconsistencies in the Taxpayers' evidence to find the Taxpayers fulfilled their burden and to grant an abatement. However, the board wishes to comment on the Town's lack of supporting documentation of its assessments. Ideally, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessments in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986). Lacking any recent and relevant sales information, the Town should have provided a detailed explanation of the basis of the land value contained in the assessment. The board is quite familiar that there are times when the municipalities are faced with a lack of comparable sales in a certain area of town. However assessors still must perform their duty and must rely on some general market data

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sales in other communities with properties with similar features. The Town submitted none of this general market information and should have.

A motion for rehearing, reconsideration or clarification (collectively "rehearing

motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

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 George A. & Joanne C. May, Taxpayers; and Jay L. Hodes, Esq., counsel for the Town of Merrimack.

Dated: July 31, 1995

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Valerie B. Lanigan, Clerk