

Kevin W. Gurney

v.

Town of Merrimack

Docket No.: 15453-94PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$53,500 (land \$35,400; buildings \$18,100) on a .10-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property has only .10 of an acre and should not have been compared to properties that are eight or nine times larger;
- (2) the neighborhood code of 107 is actually blank and does not exist; and

(3) the Property does not have any legal access to the water or a view of the water and should not have been compared to the three waterfront properties.

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The Town argued the assessment was proper because:

(1) the size of a lot, by itself, does not affect the value as long as it may be improved; and

(2) waterfront lots in this area do not show a different value than non-waterfront lots in the neighborhood.

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

Based on the evidence, the board finds the proper assessment for the Property to be \$45,600. Applying the Town's 1994 equalization ratio of .95 results in a market value, for the Property, of approximately \$48,000 ( $\$45,600 \div .95$ ).

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. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). 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 and testimony from both parties concerning land values. Some of the issues raised were size, location and views. The Town contended that size alone had no affect on value as long as the lot could be improved. The Town offered three sales of vacant land to support this position. Although the three sales were not exactly the same size, they varied by less than .02 acres from the largest to the smallest. Additionally, they were collectively sold by the same grantor to the same grantee on the same day. The board did not find these three sales to be conclusive evidence that size is not, to some extent, a factor in the market value of vacant tracts of land. Although the Property is improved, its very small area (.10 ac.) restricts the options that may be associated with a larger site. Some of these options might include alternative positions for the improvements as well as a buffer from abutting

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properties. The locational issue involved the proximity of the Property to the Souhegan River. It was the Town's position that having river frontage did not influence value per se. The Town did consider a unique view to be an influence on land values. The Property does not have either water frontage or any unique view associated with it.

Based on its experience, the board's ordered assessment reflects the small size of the site and the overall condition of the dwelling as testified to. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of

Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate

evidence).

If the taxes have been paid, the amount paid on the value in excess of \$45,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995 and 1996. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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

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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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kevin W. Gurney, Taxpayer; Jay L. Hodes, Esq., Counsel for the Town of Merrimack; and Chairman, Board of Assessors, Town of Merrimack.

Date: January 15, 1997

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Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" April 23, 1997 motion to enforce (Motion).

The board denies the Motion and clarifies its January 15, 1997 decision (Decision).

The board found the proper 1994 assessment to be \$45,600 based on a market value finding of \$48,000 and the "Town's" 1994 equalization ratio of 95%. In 1995, the Town performed a general reassessment. Therefore, pursuant to RSA 76:17-c I the board ordered abatement of \$45,600 applies only to the 1994 tax year.

**76:17-c Effect of Abatement Appeal on Subsequent Taxes. I.**

Whenever the board of tax and land appeals, pursuant to RSA 76:16-a, or the superior court, pursuant to RSA 76:17, grants an abatement on the grounds of an incorrect property assessment value, the selectmen or assessors shall thereafter use the correct assessment value, as found by the board or the court, in assessing subsequent taxes upon that property, until such time as they, in good faith, reappraise the property pursuant to RSA 75:8 due to changes in value, or until there is a general reassessment in the municipality.

The Decision on page 3 included general refund wording for subsequent years that provides for a 1995 and 1996 abatement "unless the Town has undergone a general reassessment." Because the Town did a reassessment in 1995, the board's jurisdiction is limited to 1994.

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SO ORDERED.

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Paul B. Franklin, Chairman

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Date: May 8, 1997

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Valerie B. Lanigan, Clerk

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