

**N.E. Salem Children's Trust**

**v.**

**Town of Rumney**

**Docket No.: 17587-97PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$486,348 (land not in current use (NICU) \$184,597; land in current use \$3,051; buildings \$298,700) on Map/Lot 02-04-03, a 134-acre lot (100 acres of which are in current use) with an office building, two residential dorm-type structures, a mobile home, two small barns and six storage sheds (the "Appealed Property"). The Taxpayer also owns, but did not appeal, Map/Lot 02-03-24, a 2.7-acre lot on Stinson Lake with a shed (the "Waterfront Lot"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or 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 Appealed Property's assessment was higher

Παγε 2

N.E. Salem Children's Trust v. Town of Rumney

Docket No.: 17587-97PT

than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) an April 1997 appraisal estimated a \$340,000 value;
- (2) there is a relatively small area of useable land (approximately 30 acres);
- (3) the Appealed Property's access is steep and although the road is town maintained, it's condition makes access difficult;
- (4) comparable land sales support the appraised land value; and
- (5) the Waterfront Lot is fairly assessed if not slightly high.

The Town argued the assessment was proper because:

- (1) the land NICU has the potential for subdivision into 13 lots;
- (2) sales and asking prices of properties with water access support the assessment;
- (3) the non-appealed waterfront lot is underassessed based on land residual calculations of improved waterfront lots that have sold; and
- (4) the sales submitted by the Taxpayer are not arm's-length sales, the sales are of properties of lower quality land, with less proximity to the lake, less frontage and poorer access.

Subsequent to the hearing the board viewed the Appealed Property and the Waterfront Lot.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$428,251 (land \$129,551 and buildings \$298,700). In short, the board finds the sales submitted by both parties and the board's view support revisions to the front foot calculations on the Appealed Property to

Παγε 3

N.E. Salem Children's Trust v. Town of Rumney

Docket No.: 17587-97PT

reflect its topography, utility and lack of deeded access.

Because the Town raised the issue of possible underassessment of the Waterfront Lot, the board reviewed the assessment of the Waterfront Lot during its deliberation of the Appealed Property.

When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the Town. *Bemis &c. Bag Co. v. Claremont*, 98 N.H. 446,449, 102 A.2d 512, 516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." *Amoskeag Mfg. Co. v. Manchester*, 70 N.H. 200, 205, 46 A. 470,473 (1899) (citations omitted). Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Waterfront Lot is comprised of a 2.7-acre "pork chop" shaped lot with over 350 feet of frontage on Stinson Lake. The Waterfront Lot also has narrow road frontage on Doetown Road, however, its actual access is across the deeded right-of-way on the adjoining property. The board, on its view, confirmed the testimony and photographs submitted by the parties that the Waterfront Lot slopes steeply down from Doetown Road and has only a small area adjacent to Stinson Lake that is relatively flat and usable. The current access is only by foot and based on its view the board concludes that, while not impossible, it would be very difficult and expensive to improve the access for more intensive use of the lot. The board reviewed both the land only and improved waterfront sales that occurred on Stinson Lake and concludes that a buildable waterfront lot has a value range between \$55,000 and \$120,000 based on its desirability, location and utility. The Waterfront Lot is larger than many waterfront lots, however, offsetting its size is its steepness, which severely limits its building potential and utility. Therefore, the board

concludes the Waterfront Lot is not underassessed at \$114,250 based on the market evidence submitted.

The board was unable to place much weight on the comparable sales submitted by Mr. Armstrong, appraiser and representative for the Taxpayer. Based largely on the Town's cross-examination and rebuttal of the sales, the board finds the comparable sales were either not truly arm's-length transactions or were in enough ways dissimilar to the Appealed Property so as to be unable to draw reliable value conclusions. However, the Taxpayer did raise convincing arguments about the Appealed Property's topography and lack of deeded water access. The board does not find that either the Town's development scheme scenario or its comparison of the values per acre of the other current-use property (Municipality Exhibit H) convincingly support the assessment. On the view, the board found the terrain along the frontage of the Appealed Property to be steep except near its easterly most bound and in the area where the Appealed Property's improvements are located. The board finds it unlikely that attractive marketable lots could be created along much of the balance of the frontage. The Town's comparison of other home-site values is inconclusive because most of the other sites have significantly less acreage than the Appealed Property. This comparison only shows the typical inverse relationship between market value on a per-acre basis and the amount of acreage and does not necessarily conclude that the Appealed Property is properly assessed.

Because of the Appealed Property's limiting terrain, the board concludes the market/topography adjustment should be reduced to 50%. As an offsetting factor the board did note, on its view, the nice mountain view from the developed portion of the Appealed Property.

Παγε 5  
N.E. Salem Children’s Trust v. Town of Rumney  
Docket No.: 17587-97PT

Further, the Town testified that the \$300 unit price for properties on the back side of Doetown Road reflected both their possible waterfront access and lake proximity. In this case the Appealed Property does not have deeded water rights and the owners to its title only have access to Stinson Lake because of their concurrent ownership of the Waterfront Lot. Thus, the board concludes the unit price overstates the Appealed Property’s lakefront proximity and an adjustment factor of minus 20% (x .8) for the lack of deeded water access is appropriate. The board understands the difficulty towns have in the mass appraisal system in trying to arrive at one unit price to reflect waterfront access and waterfront proximity influences on back lot values. However, where it is clear, as in this case, that the Appealed Property does not have the legal right of water access (separate from the concurrent ownership of the non-appealed waterfront lot), an adjustment is warranted to differentiate from lots with water access.

The board’s analysis has focused primarily on the land component of the assessment inasmuch as the parties generally agreed in their estimates as to the value of the improvements. The board has reviewed both parties improvement values, noting the differences in how site and water and septic costs are estimated, and concludes they are generally in agreement with each other.

Thus, in summary, the board finds the assessment to be calculated as follows:

Frontage-basic value \$574,200 x .50 x .60 x .80 x .80 .....	\$110,250.00
10 Acres Rear .....	1,250.00
Four Septic Systems .....	15,000.00
Land In Current Use .....	<u>\$ 3, 051.00</u>
Total Land Value .....	\$129,551.00
Building Value .....	<u>298,700.00</u>
<b>Total Assessed Value</b>	<b><u>\$428,251.00</u></b>

If the taxes have been paid, the amount paid on the value in excess of \$428,251.00 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Παγε 6  
N.E. Salem Children's Trust v. Town of Rumney  
Docket No.: 17587-97PT

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 1998. 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 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

Παγε 7

N.E. Salem Children's Trust v. Town of Rumney

Docket No.: 17587-97PT

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Thomas W. Armstrong, Representative for N.E. Salem Children's Trust, Taxpayer; Walter L. Mitchell, Esq., Counsel for the Town of Rumney; and Chairman, Board of Selectmen of Rumney.

Date: October 7, 1999

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Lynn M. Wheeler, Clerk

0006