

**Richard C. and Tina Flegenheimer**

**v.**

**Town of Meredith**

**Docket No.: 18350-99PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of: Map W03/Lot 18 - \$185,000 (land \$146,000; buildings \$39,000) on a 39,028 square-foot lot with a camp; and Map W03/Lot 2 - \$18,200 (land only) on a 2.99-acre lot (the "Properties"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Properties' assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

In a May 4, 2001 letter, the Taxpayers requested leave to not attend the hearing and also requested the board decide the case based on the submissions previously sent to the board. The

board granted the Taxpayers' request on May 8, 2001.

The Taxpayers argued the assessments were excessive because:

- (1) the Properties were purchased for \$189,900 in July 1998;
- (2) an appraisal which focused only on the parcel that had frontage on Lake Winnisquam indicated the market value to be \$189,000 in September 1998; and
- (3) the market value for the Properties was \$186,436 on April 1, 1999 (Taxpayers' appeal form, Sec. G.)

The Town attended the hearing and argued the assessments were proper because:

- (1) the Taxpayers' appraisal only valued one of the appealed Properties (Map W03-Lot 18) and the appraised value was more than the purchase price of both Properties;
- (2) the selling dates of the comparable sales used in the Taxpayers' appraisal and the lack of any time adjustment makes the estimated value unreliable for the tax year in question; and
- (3) the Taxpayers gave no evidence of market value for the unimproved lot (Map W03 - Lot 2).

### **Board's Rulings**

Based on the evidence submitted by the Taxpayers and the evidence and testimony provided by the Town at the hearing, the board finds the Taxpayers did not prove the Properties were disproportionately assessed.

The board reviewed the appraisal submitted by the Taxpayers and for several reasons found it to be insufficient evidence to determine the Properties were disproportionately assessed.

First, the appraisal only estimates the market value of the lot that has frontage on Lake Winnisquam (Map W03/Lot 18). The board must consider the value of the Taxpayers' total estate when determining if the assessments are disproportionate. The appraiser did not submit

any evidence of the market value for the lot that does not have water frontage on Lake Winnisquam (Map W03/Lot 2). Without an estimate of value for both lots the board cannot determine if the Taxpayers' entire estate is disproportionately assessed.

Second, the board concurs with the Town that the appraisal submitted by the Taxpayers is too outdated to be of probative value in determining whether or not the Properties were overassessed. The sales used by the appraiser occurred in 1997 and no discussion or adjustments were given to update the appraisal to the effective date of the assessment, April 1, 1999. Given the volatility of the real estate market in New Hampshire between the time period of the selling dates of the comparable sales used by the appraiser and the effective date of the assessment, April 1, 1999, some discussion relative to the time elapsed, and its affect on appreciation or depreciation of the comparables sales, was necessary.

In addition to the concerns the board has about the probative value of the Taxpayers' appraisal, the board did not receive any information regarding the purchase of the Properties. For the board to consider the purchase price to be evidence of the Properties' market value, it would have been necessary for the Taxpayers to show the Properties' purchase was an arm's-length transaction. The Taxpayers made no such showing.

The board finds the Taxpayers submitted no convincing evidence of the Properties' market value, and therefore, did not carry their burden to show the Properties were disproportionately assessed.

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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Richard C. and Tina Flegenheimer, Taxpayers; and Chairman, Board of Selectmen of Meredith.

Date: June 25, 2001

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Lisa M. Moquin, Temporary Clerk