

Kurt B. Pauer and Sharon Pauer

v.

Town of Amherst

Docket No. 5636-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$134,500 (land, \$36,100; buildings, \$98,400) on their real estate located on Green Road, consisting of a dwelling on a 2-acre lot, being lot 9 of the Christian Hill Heights subdivision (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was 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 failed to carry their burden and prove any disproportionality.

The Taxpayers argued:

(1) their land value was inequitably assessed compared to the assessment of other parcels in the area not in the Christian Hill Heights subdivision;

(2) the setback requirement from Green Road and watershed protection district setback from a seasonal stream limited the utility and value of the lot; and

(3) their lot should have received the same adjustment for the dirt road as properties across the road had received.

The Town argued that the Taxpayers had purchased the lot unimproved in July 1987 for \$105,000 and that the various setback requirements did not have a substantial effect on the lot's value as evidenced by similar sale prices in the subdivision of lots with fewer restrictions.

The Board rules that no evidence was presented to substantiate that the Taxpayers' property as a whole was overassessed. Rather, the Taxpayers' evidence raised questions unanswered at the hearing that other property in the area may be underassessed. In particular, parcels 122-3 and 167, opposite the Taxpayers' property, allegedly had received an adjustment for fronting on a dirt road when in fact the evidence was clear that Green Road was paved in this area. The Taxpayers argued that their property should also receive this adjustment as if fronting on a dirt road to have an equitable land assessment.

The fact that the assessment method underassesses some properties and overassesses others does not relieve the present taxpayers of their obligation to pay their fair share of taxes. Amoskeag Mfg. Co. v. Manchester, supra at 205, 46 A. at 473. Appeal of Michael D. Cannata, Jr., & a., 129 N.H. 399, 402 (1987).

For the Board to reduce the Taxpayers' assessments would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick.

The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. "Justice requires that it (the whole property) should be appraised for taxation at the same ratio to its true value

as the assessed value of all the other taxable estate bears to its true value" Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200. (emphasis added)

The Board finds the Taxpayers failed to prove their assessment was disproportional.

The Board also finds that, while both parties testified that no sales of property had occurred in the general area other than those in Christian Hill Heights, the lower base land values of adjoining lots could be attributed to a lower market value for these areas at the time of the revaluation in 1985 and/or an underassessment of these lots.

January 22, 1991

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Kurt B. and Sharon Pauer, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Amherst.

January 22, 1991

Michele E. LeBrun, Clerk