

Timothy O'Connor and Brian O'Connor  
v.  
Town of Bristol

Docket No. 5848-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$108,800 (land, \$83,000; buildings, \$25,800) on Arrow Head Lane, consisting of a seasonal dwelling (the Property). The Taxpayers, Timothy O'Connor and Brian O'Connor, each own one-half interest in the Property. The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because:

- (1)the cottage can only be used seasonally from late May to mid-October;
- (2)100 percent of the lot cannot be used due to the right-of-way;
- (3)the thru-way is not plowed in the winter and there is no town water or sewage;
- (4)the basement is only a crawl space area with an unlevelled dirt floor; and
- (5)the roof, deck and porch need repair and/or replacement.

The Town argued the assessment was proper because:

- (1)the road is plowed;
- (2)Town water is to the site;

(3)adjustments were made for the crawl space;

Docket No. 5848-89

Timothy O'Connor and Brian O'Connor

v. Town of Bristol

Page 3

(4)a 5 percent adjustment was made for the right-of-way through the lot and that appears adequate for the minimal disruptance; and

(5)comparable sales indicated that properties were selling in the range of their assessments.

The board's inspector inspected the Property, reviewed the property tax card, and filed a report with the board. Based on the evidence we find the correct assessment should be \$104,700 (land, \$78,900 and building \$25,800). The board finds that an adjustment of ten percent to the land is warranted to reflect the encumbrance of the right-of-way on the Property.

If the taxes have been paid, the amount paid on the value in excess of \$104,700 (Timothy O'Connor - \$52,350; Brian O'Connor - \$52,350) shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Timothy O'Connor and Brian O'Connor, Taxpayers; and Chairman, Selectmen of Bristol.

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Melanie J. Ekstrom, Deputy Clerk

Date: February 5, 1992

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