

John G. Drouin and Katherine Drouin

v.

Town of Belmont

Docket No. 6257-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$116,400 (land only) on their real estate consisting of 4.72 acres of commercially zoned land on Route 3 (the Property). 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 disproportionately taxed.

The Taxpayers argued the assessment was excessive because:

1) for the parcel to be used, a large knoll would have to be removed and the site leveled; and

2) the State's slope easement along 300 feet of the steepest portion of the frontage prohibits the removal of a large portion of the knoll and access to the lot along that frontage.

The Town argued the assessment was proper because:

1) this was the last undeveloped commercial parcel along Route 3 in

this area; and

2) the Town was unaware of the State's refusal to allow the Taxpayers to cut trees, remove material, and gain access to the parcel in the slope-easement area; there remains over 400 feet of frontage that has no access or slope-easement restrictions on it.

Upon questioning, the Town did state that it had "no objection" to the board's inspector's report which estimated the value at \$92,400.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be \$85,000 (land only). This assessment is ordered because:

1) the existence of the slope easement effectively precludes full utilization of the portion of the parcel behind the easement; and

2) the board's inspector's report properly adjusts for the topography but needs to be further adjusted for the existence of the slope easement.

If the taxes have been paid, the amount paid on the value in excess of \$85,000 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

August 23, 1991

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin

Ignatius MacLellan, Esq.

I certify that copies of the within decision have been mailed this date, postage prepaid, to John G. and Katherine Drouin, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Belmont.

August 23, 1991

Brenda L. Tibbetts, Clerk