

Lewis D. and Mary G. Gilmore

v.

Town of Fitzwilliam

Docket No.: 6262-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$4,000 (land only) on Map 36, Lot 16; and \$42,000 (land only) on Map 36, Lot 17 (the Properties). 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 disproportionality.

The Taxpayers argued the assessment was excessive because the lots' buildability is in doubt under current zoning regulations in Fitzwilliam.

Lewis D. and Mary G. Gilmore

v. Town of Fitzwilliam

Docket No.: 6262-89

Page 2

The Town argued the assessment was proper because, "We allow building on lots less than 3 acres in size, provided all other provisions of the law are met." (underlined emphasis added by the Board)

Based on the evidence, we find the correct assessments should be:
Lot 17 - \$30,000
Lot 16 - \$ 1,500
\$31,500 total

The board observes the best evidence of an unbuildable lot is a denial by the Town of a building permit. No evidence of such an application by the Taxpayers was submitted.

If the taxes have been paid, the amount paid on the value in excess of \$31,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lewis D. and Mary G. Gilmore, taxpayers; and Chairman, Selectmen of Fitzwilliam.

Dated: July 15, 1992

Valerie B. Lanigan, Clerk

Lewis D. and Mary G. Gilmore

v. Town of Fitzwilliam

Docket No.: 6262-89

Page 3

0007