

Glenn E. Lawler and Mary E. Lawler

v.

Town of Atkinson

DECISION

Docket No.: 6414-89

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$108,000 (land only) on a 3.99 acre lot on Coventry Road (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 disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the land was valued at \$21,750 for 1988 and in 1990 appraised at \$112,000 and the taxes more than doubled;
- (2) the land is undeveloped so a tax for that amount is unjustified;

(3) they do not live in the Town or use any of the services;

Glenn E. and Mary E. Lawler

v. Town of Atkinson

Docket No.: 6414-89

Page 3

- (4) the Town did not approve Coventry Road as a road until February, 1990;
- (5) they can no longer afford the land with the insurmountable taxes and cannot consider building a house on the Property; and
- (6) in most cities and towns undeveloped land is not taxed the same as developed land.

The Town argued the assessment was proper because:

- (1) comparable sales indicate the value is fair; and
- (2) that area of Coventry Road was graded 30 percent above average but based upon evidence in the previous hearing (Silva #6415-89), the neighborhood factor should be changed to code G.

The Taxpayers complained about the high amount of taxes they must pay.

The amount of property taxes paid by the Taxpayers was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 120 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

Glenn E. and Mary E. Lawler

v. Town of Atkinson

Docket No.: 6414-89

Page 4

Based on the evidence, we find the correct assessment should be \$100,000. This assessment is ordered based on the evidence that the neighborhood code should be changed to a G (20 percent above average).

Glenn E. and Mary E. Lawler

v. Town of Atkinson

Docket No.: 6414-89

Page 5

If the taxes have been paid, the amount paid on the value in excess of \$100,000 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 Glenn and Mary Lawler, taxpayers; and Chairman, Selectmen of Atkinson.

Dated: May 5, 1992

Valerie B. Lanigan, Clerk

0007