Donald L. Dickerson and S. Yolanda Dickerson
v.
Town of Fremont

Docket No. 6437-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $268,000 (land, $134,750; buildings, $133,250) on a single-family colonial on 5.05 acres of land (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 disproportionally taxed.

The Taxpayers argued that the Property was overassessed because:

1) the Property was purchased for $213,500 in January of 1989 and the selling price is an accurate reflection of the Property's worth;

2) the land is appraised at $85,000 with a site adjustment of 85 percent, while other land on Scribner Road is appraised at $85,000 with a site adjustment of 75 percent;

3) the lot is adjacent to an unsightly gravel pit, further lowering its value, and the sole access to the pit runs parallel to the subject property to the east;

4) the land should be assessed at a lower rate than the 75 percent rate because of the existence of the gravel pit;

5) the Property is assessed as having two buildable lots, which is unfair and inequitable because a portion of the land consists of wetlands, including a pond and a brook with permanent flowage;

6) according to Fremont zoning ordinances, the "second lot" does not meet the Town's criteria for a buildable lot and has been determined to be unsuitable for building due to insufficient lot depth and wetland setback requirements;

7) given the fact that the second lot is not subdividable by Town standards, it should not be assessed for two buildable lots; and

8) an equitable assessment of the land should be $71,245.

The Town argued the assessment was proper because:

1) the site-adjustment factor of 85 percent indicates a better-than-average lot;

2) the Property, along with comparable Bobby (Map 2, Lot 15-2) constitute a neighborhood themselves and are in estate-type settings;

3) the gravel pit was a preexisting condition known when the Property was purchased;

4) the Town was unaware that the wetland was not on the Property line and that fact would temper the assessment of the second home site; and

5) the comparables indicate the assessment is fair and equitable.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be $233,800 (land, $100,550; and building, $133,250). This assessment is ordered because the potential of a second lot is speculative at best, given the wetlands, and the unit price of $85,000 should be reduced by a site-adjustment factor of 40 percent. The Board finds the excess frontage factor of 85 percent to the improved site is proportionate to other better-than-average lots.

If the taxes have been paid, the amount paid on the value in excess of $133,250 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg III, Chairman

Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to Donald L. and S. Yolanda Dickerson, and to the Chairman, Board of Selectmen, Town of Fremont.

March 3, 1992

Melanie J. Ekstrom, Deputy Clerk

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