

**Heirs of John and Mary Bernaby**

**v.**

**Town of Atkinson**

**DECISION**

**Docket No.: 6709-89**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$70,000 (land only) on a 1.0 acre parcel of land on North Broadway (the Property). The Taxpayers also own but did not appeal the assessment of \$166,700 (land, \$82,900; building, \$83,800) on a single family dwelling on 4.9 acres). 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) it is only a 1.0 acre level lot with paved road frontage; and a good portion of the lot is wet year round;
- (2) zoning in the Town is 2 acres, the lot may be grandfathered but will have

to get approvals to develop;

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- (3) in early 1990 a realtor, Gordon Brown, indicated that if the Property was listed they would probably get offers between \$50,000 and \$55,000;
- (4) because of the high assessment, will have to either sell as a building lot or to an abutter at a loss; and
- (5) Taxpayer conceded that since he lives across the street his preference would be to see the lot remain undeveloped.

The Town argued the assessment was proper because:

- (1) many improved lots in the neighborhood are 1/2 to 1 acre in size;
- (2) permits to build are not difficult to apply for;
- (3) Avitar did a sales analysis during the 1989 revaluation; and
- (4) the Property was visited and appeared buildable, in spite of seasonal ponding in one area.

Based on the evidence, we find the correct assessment should be \$63,000 for land only. This assessment is ordered because:

the Board finds a 10% adjustment should be made for the wet area as development of the lot may require more site work for driveway, septic, etc.

If the taxes have been paid, the amount paid on the value in excess of \$63,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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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 Kenneth M. Bernaby, taxpayer; and Chairman, Selectmen of Atkinson.

Dated: April 30, 1992

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Valerie B. Lanigan, Clerk

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