

Francis F. and June T. Galvin

v.

Town of Derry

Docket No.: 6720-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$255,600 (land, \$171,000; buildings, \$84,600) on their real estate at 34 Pingree Hill Road, consisting of a dwelling on 8 acres (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 disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) they don't believe the lot contains 8 acres; a survey is presently being conducted to determine the actual size;
- (2) the 7 acres in excess of the house site are valued excessively at \$111,000 because the land is very wet and not developable; and
- (3) a realtor, Charles Ryan, had estimated the value in 1990 to be \$189,000.

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The Town submitted an appraisal report which included estimates of value by the cost and market approaches and an assessment comparison of comparable properties.

The Town argued the assessment was proper because:

- (1) the tax map indicates the lot size as 8 acres;
- (2) the excess land was estimated to have the potential of two additional house lots; and
- (3) similar land was developed into house lots behind the Taxpayers.

Based on the evidence, we find the correct assessment should be \$206,100 (land \$121,500 and building \$84,600). This assessment is ordered because:

- (1) the photographs and soil information submitted by the Parties indicate that the land, while possibly developable, would be costly to construct septic systems due to the wetness and would not be considered prime subdivision land;
- (2) to reflect this limited potential of the excess land, the 2 acre secondary sites should receive a 50% adjustment and the 5 acres of rear land should receive a 30% adjustment; and
- (3) the map is based upon an aerial base map and the Property is in relative proximity to several fixed geographic features (i.e., powerline right-of-way, various roads, town lines, etc.). Thus, lacking a survey of the Property, the tax map is the best evidence submitted as to the size of

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the land.

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If the taxes have been paid, the amount paid on the value in excess of \$206,100 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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Francis F. and June T. Galvin, taxpayers; and Chairman, Selectmen of Derry.

Dated: July 7, 1992

Valerie B. Lanigan, Clerk

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