

Bruce T. Russell and Theresa A. Russell

v.

Town of Westmoreland

Docket No. 7244-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$149,100 (land, \$72,000; buildings, \$77,100) on their real estate on Pierce Lane, identified as Map 3, Lot 52, consisting of a dwelling on 2.6 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 their burden and proved they were disproportionally assessed.

The Taxpayers argued the assessment was excessive because:

(1) their land is assessed higher due to the view than other lots with the same view;

(2) comparing the assessments of other properties with a similar view indicates a proper assessment should be \$127,000; and

(3) a comparative market analysis done in 1990 estimated a market value at \$116,000.

The Town argued the assessment was proper because:

(1) the view factor used by the Town was consistent with other properties with similar views; and

(2) however, a correction should be made to the house for there not being any attic area, reducing the assessment to \$145,600.

Based on the evidence, we find the correct assessment should be \$127,600 (land \$54,000 and building \$73,600). This assessment is ordered because:

(1) the evidence (photographs and comparable assessment record cards) indicates that a 1.5 view factor is more appropriate than the 2.00 factor used by the Town;

(2) the Town's correction for the lack of attic space is reasonable.

If the taxes have been paid, the amount paid on the value in excess of \$127,600 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

Paul B. Franklin, Member

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce T. and Theresa A. Russell, the Taxpayers, and to the Chairman, Board of Selectmen, Town of Westmoreland.

August 13, 1992

Valerie B. Lanigan, Clerk

