

David B. and Diana C. Thomas

v.

Town of Epping

Docket No.: 7486-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$432,500 (land, \$389,300; buildings, \$43,200) on a 50.05-acre lot with a 1-story ranch-style home on Rte. 27 (the Property). The Taxpayers own, but did not appeal, their property on French Road. 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 house was in substantial disrepair;
- (2) the gravel pit was closed in 1988 although the pit had not yet been reclaimed;
- (3) the quality of the material in the pit was poor and was suitable only for fill; the

better material was used to build the road to access the pit and only enough material was eventually sold to cover the costs of engineering and surveying the pit;

(4) the house was renovated and sold with five acres for \$70,000 in 1992; and

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(5) the remaining land, with the pit reclaimed, is on the market now for \$175,000.

The Taxpayers also testified the Town stated appeals could not be filed for other years because taxes had not been paid.

The Town argued the assessment was proper because:

- (1) it included the gravel value;
- (2) the house was not overassessed; and
- (3) the lot has substantial frontage on the highway and the river.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$283,250 (land, \$255,100; buildings, \$28,150). This assessment is ordered because:

- (1) the board's field investigator filed a report (Report) indicating an assessment of \$315,100 was appropriate;
- (2) the board finds the Report made adjustments for conditions of the Property that are supported by the evidence, specifically:

a) the frontage on the Lamprey River is too distant from the house site to have a measurable affect on its market value (thus the condition factor on the site is reduced from 1.25 to 1.00);

b) the area of the "gravel" pit has little market value, but the Property's frontage as improved with the road does contribute to its value;

c) the rear acreage should be correctly assessed at \$3,050 per acre ($\$5,000 \times .81$ (size factor) $\times 1.25$ (water frontage factor) $\times .60$ (topography factor)); neither the

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Town nor the board's investigator had the calculation correct; and

d) the house was in poor condition and needed to be renovated.

If the taxes have been paid, the amount paid on the value in excess of \$283,250 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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Given the hearing held today, the board is concerned about the misinformation given the Taxpayers by the Town regarding their appeal rights while taxes are unpaid. While the board lacks jurisdiction over the 1990 and 1991 tax years, the board, however, strongly recommends that the Towns use the ordered 1989 assessment for 1990 and 1991 with any good faith adjustments, due to changes in the Property or changes under RSA 75:8. To arrive at the proper adjustments, if any, the Town should communicate with the Taxpayers. The Town should complete its communication and send out abatement checks, if appropriate, for 1990 and 1991 within 45 days of the clerk's date below. If the Town fails to do this, the Taxpayers may so notify the board, and the board will consider exercising its RSA 71-B:16 II jurisdiction. RSA 71-B:16 II states:

71-B:16 Order for Reassessment. The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state:

- II. When it comes to the attention of the board from any source, except as provided in Paragraph I, that a particular parcel of real estate or item of personal property has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed; or

The board only uses its RSA 71-B:16 II power when it finds unusual circumstances and problems, which appear to exist her.

SO ORDERED.

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Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David B. and Diana C. Thomas, Taxpayers; and Chairman, Selectmen of Epping.

Dated: October 15, 1992

Melanie J. Ekstrom, Deputy Clerk

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