

Robert B. Bass, Jr.; Edith B. Bonsal; and Joanne B. Bross

v.

Town of Peterborough

Docket Nos.: 7493-89; 7494-89; and 7495-89, respectively

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessments of the following:

Docket No. 7493-89: \$327,400 (land, \$54,200; buildings, \$273,200) on a cape cod dwelling on 4.56 acres of land;

Docket No. 7494-89: \$135,100 (land, \$47,200; buildings; \$87,900) on a dwelling on 2.80 acres of land; and

Docket No. 7495-89: \$267,300 (land, \$48,000; buildings, \$219,300) on a dwelling on 3.0 acres of land, all located on East Mountain Road (the Properties). These appeals were consolidated for hearing. For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing the assessments were 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 assessments were excessive because:

- (1) these Properties can only be accessed by a 0.9 acre steep private dirt road which is accessible only in the summer months;
- (2) the houses are purely seasonal and are not winterized;
- (3) the deeds contain restrictions on the sales of the Properties which are a limiting factor affecting their values; and
- (4) the assessed values should be reduced by ten percent to reflect their specific limiting factors.
- (5) Their research indicated that the Town applied a standard .75 market adjustment across the board unless the properties were of new construction or in poor condition.

The Town argued the assessments were proper because:

- (1) the entire Town was reassessed in 1989;
- (2) East Mountain Road is maintained year round;
- (3) market adjustment factors of .75 (.85 on Bonsal) were applied to the building values for the deed restrictions; and
- (4) a primary site value of \$40,000 was used for all residential/rural acreage.

Based on the evidence, we find the correct assessments should be as follows:

Docket No. 7493-89 (Bass): \$294,660

Docket No. 7494-89 (Bonsal): \$121,590

Docket No. 7495-89 (Bross): \$240,570

These assessments are ordered to reflect the negative factors inherent

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in the deeds, the access restrictions and the fact that the Properties are not winterized.

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the taxpayers paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

If the taxes have been paid, the amount paid on the values in excess of \$294,660 (Bass - #7493-89); \$121,590 (Bonsal - #7494-89); and \$240,570 (Bross - #7495-89) 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

Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert P. Bass, Jr., Esq., Counsel for the Taxpayers; and Chairman, Selectmen of Peterborough.

Dated: April 28, 1992

Valerie B. Lanigan, Clerk