

Robert W. Nimke and Lois G. Nimke
v.
Town of Westmoreland
Docket No. 7628-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$122,300 (land, \$47,300; buildings, \$75,900) on their real estate on Old Route 12, identified as Map 17, Lot 19, consisting of a dwelling and attached garage on a 2-acre lot (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) the open land that affords the view from the Property is not owned by the Taxpayers;
 - (2) the lot is largely ledge and steep with only one spot usable for a house;
- and
- (3) the market value should be approximately \$100,000 based on lower land sales in the area.

The Town argued the assessment was proper because the ledge and slope were taken into consideration and were partially offset by the view from the Property.

Based on the evidence, we find the correct assessment should be \$114,400 (land \$39,400 and building \$75,000). This assessment is ordered because:

(1) based upon the testimony and evidence (e.g., photographs), the topographical difficulties with the lot offset the view to a greater extent than assessed by the Town; and

(2) the condition factor should be reduced to 1.25 for this reason.

If the taxes have been paid, the amount paid on the value in excess of \$114,400 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 certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert W. and Lois G. Nimke, Taxpayers, and to the Chairman, Board of Selectmen, Town of Westmoreland.

July 30, 1992

Valerie B. Lanigan, Clerk