William C. Wolf

v.

Town of Tilton

Docket No.: 10602-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $142,600 (land $78,300; buildings $64,300) on a .910-acre lot with a cottage (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved he was disproportionately assessed.

The Taxpayer argued the assessment was excessive because:

(1) the house is 80 feet above water and 150 feet back from the water;

(2) Noyes Road is a privately maintained road which is in very poor condition;

(3) there are 29 properties on Noyes Road and currently 11 are for sale, a Town dumpster services all of the homes;

(4) there is a waste smell from the main sewer line;

(5) Silver Lake has an average depth of 7 to 8 feet, at its deepest spot is 15 feet, and it smells like dead fish and floods every spring;

(6) the Property is assessed unfairly when compared to similar properties and the land is disproportionately assessed compared to other areas of Town; and

(7) in 1989, Century 21 suggested $95,000 to $100,000 to sell the Property.

The Town argued the assessment was proper because:

(1) sales on Lake Winnisquam were used to arrive at the value and adjusted back for the value on Silver Lake;

(2) Lake Winnisquam properties are 2-1/2 times the value of Silver Lake properties;

(3) a 25% topography adjustment was applied to adjust for the Property's slope to the water;

(4) the neighborhood code is appropriate and deals with the water influence;

(5) no adjustment was made for the smell from the sewer line because the Town was unaware of the problem and received no complaints from taxpayers; and

(6) the Town would not have any objection to a neighborhood factor of F.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be $136,100 (land $71,800; building $64,300). This assessment is ordered because the board finds that, based on the poor condition of Noyes Road and its related problems with trash removal and waste smell, that a neighborhood code

of F should be applied. No further adjustments are warranted because the Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Tilton. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

If the taxes have been paid, the amount paid on the value in excess of $136,100 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

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George Twigg, III, Chairman

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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 William C. Wolf, Taxpayer; and Chairman, Selectmen of Tilton.

Dated: September 16, 1993

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Valerie B. Lanigan, Clerk