

James F. and Dorothy J. Tilton

v.

Town of Tilton

Docket No.: 10621-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$66,800 on a .62-acre vacant lot (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 Property has no usable physical access to Route 140 as a result of a 125-foot long guardrail from the end of the bridge across the frontage and is further restricted by buried gas lines, electric lines and telephone cables along the same frontage;

- 2) the Property is 15 feet below road grade and in a flood plain;
- 3) the Property is zoned commercial, yet its practical use and value has been to provide a leach field site for the abutting house lot which was substantially reduced in size by an eminent-domain taking in 1967, of a 75-foot wide strip along the frontage;
- 4) the Property was purchased in 1971 for \$750 specifically to site the leach field and prior to April 1, 1990 the Taxpayers' home on the abutting lot was connected to the Town sewer, thus eliminating the need for a leach field on the subject lot;
- 5) after April 1, 1990, the two lots were combined and assessed as one lot for residential use; and
- 6) the assessment on the subject lot should be \$10,000, contributory value to an abutter for the tax year 1990 only.

The Town argued the assessment was proper because:

- 1) the same methodology was used throughout the Town;
- 2) the Property's value was based on land sales used during the Town's 1990 revaluation;
- 3) the Property has utility value and is in a prime location; and
- 4) neither the flood plain nor the riverfront value were considered in the assessment.

Board's Rulings

Based on the evidence, the Board finds the Town failed to recognize and adjust for the severely restricted physical access to the subject .62-acre flood-plain lot along the frontage as a result of the state's installation of

a 125-foot long guardrail. The Board finds the highest and best use of the

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subject lot is supplemental land to an abutter, and rules the correct 1990 assessed value to be \$10,000.

The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

If the taxes have been paid, the amount paid on the value in excess of \$10,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to James F. and Dorothy J. Tilton, Taxpayers; and Chairman, Selectmen of Tilton.

Dated: April 20, 1993

Melanie J. Ekstrom, Deputy Clerk

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