

David L. Berard

v.

Town of Tilton

Docket No.: 10622-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$235,800 (land, \$120,400; buildings, \$115,400) on 2.66 acres and a house (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 disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the land has several burdens the Town did not take into consideration, i.e. easement for State to put 3 to 4 foot culvert which drains into lot and makes most of land wet, 25 feet of the water frontage is used for drainage, four neighboring lots have common driveway located on the Property;
- (2) the Property is subject to a right-of-way to the water for the benefit of nearby condo owners;

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- (3) the Town has assessed the neighboring land (Thompson) lower than the subject by using lower neighborhood and condition factors;
- (4) comparable assessments of residential properties with similar homes and land prove the Property is disproportionately assessed; and
- (5) assessments of multi-family units and commercial properties are further indications that the subject is overassessed.

The Town argued the assessment was proper because:

- (1) the Property is located in a business zone but its influence is such that it is priced as residential because the fact that it is on water takes precedence;
- (2) two comparable sales support the assessment;
- (3) comparable assessments support the Property is assessed fairly;
- (4) the condominium owners have access to the beach through Lot 5, not the subject Property; and
- (5) an adjustment was made to the Thompson property because it shares beach rights with Lots 3A, 3B and 3C.

#### Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$208,800 (land, \$93,400; buildings \$115,400) for the following reasons:

- (1) The Property is encumbered with a 50 foot right of way servicing lots 3, 3A, 3B and 3C and a right-of-way running to the beach area. The board finds

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that the existence of the shared access warrants a reduction to the Property and finds the land factors should be adjusted to 1.20 and 1.90 consistent with the Thompson property.

(2) The board finds that the excess acreage value of \$4,000 is fair and needs no further reduction for the wet areas.

(3) No reduction is warranted for any use of the right-of-way by the condominium owners because the Town disputed the claim and the testimony was not supported by any documented evidence.

If the taxes have been paid, the amount paid on the value in excess of \$208,800 shall be refunded with interest at six percent per annum from date paid to refund date.

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 David L. Berard; and the Chairman, Selectmen of Tilton.

Dated: September 16, 1993

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Valerie B. Lanigan, Clerk