

Hamilton Family Realty Trust, et al

v.

Town of Tilton

Docket No.: 8332-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$162,300 (land, \$78,200 buildings, \$84,100) consisting of .630 acres (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 denied.

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(3); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry their burden and prove any disproportionality.

The Taxpayers argued the assessment was excessive because:

1) a warranty deed submitted shows a transfer of property in February, 1991 indicating a sale of approximately \$99,000;

- 2) a May 1, 1979 mortgage plot indicates a right of way through the Property "alienating about 1/3 of the land to isolation";
- 3) excessive traffic on the right of way creates anxiety;
- 3) a July 16, 1990 water analysis report submitted indicates "the water is unsafe for consumption due to non-coliform bacteria being too numerous to count";
- 4) a December 6, 1990 appraisal indicates a fair market value of \$120,000; and
- 5) a reduction of the value to \$120,000 would be proper.

The Town argued the assessment was proper because:

- 1) the warranty deed refers to another property which has deeded beach rights, and is not relevant to the Property;
- 2) the water analysis report does not clearly establish it was from the Taxpayers' Property, and further, it is not unusual for water front property to have high bacteria. However, the Town has suggested a \$5,000 reduction due to the fact that they were unaware of the water problem;
- 3) Taxpayers appraisal is unjustified as no sales data or comparable properties were listed; and
- 4) the assessment methodology used in all 1990 cases produced an assessment value lower than the 1988 sales which accounted for the declining market.

The board finds the Taxpayers provided no probative evidence of market value. We note, the Town has accounted for the right-of-way in the assessed value as shown on the property record card. The board further finds that the Town's suggested allowance of \$5,000 is reasonable due to the water problem.

Based on the Town's suggested reduction of \$5,000, we find the correct assessment should be \$157,300 (land \$78,200 and building \$79,100). If

the taxes have been paid, the amount paid on the value in excess of \$157,300

shall be refunded with interest at six percent per annum from date paid to
refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

Date: September 13, 1991

I certify that copies of the within decision have been mailed this
date, postage prepaid, to Donald R. Hamilton, representing Taxpayers and
Selectmen of Tilton.

Date: September 13, 1991

Melanie J. Ekstrom, Deputy Clerk