

Frank Gregory and Janet Gregory

v.

Town of New Boston

Docket No.: 8505-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$182,100 (land - 124,400, buildings- 57,700) on a single-family house with 41.21 acres on Bedford Road (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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

1) the property is land locked with only a right-of-way for access;

- 2) the right-of-way/driveway is 1700 feet long, overgrown and washed out but was assessed the same as a neighbor's paved driveway;
- 3) the house was incomplete;
- 4) the land-locked portion was assessed at \$1,960/per-acre, while the abutting parcel containing the same terrain was assessed at only \$1,500/per-acre;
- 5) the taxes increased \$1,422.90 in one year; and

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- 6) three realtor's estimated an average \$138,330 price.

The Town argued the assessment was proper because:

- 1) the neighbor's property is only 1.8 acres; and
- 2) the realtors' estimated prices were only opinions.

Board's Rulings

It is the board's experience that the market would recognize the inconvenience and maintenance of a 1700 foot drive to a house site as exceeding any benefit of privacy afforded by the long acces. Therefore, the house site value should be reduced by 20 percent resulting in a proper assessment of \$174,900 (land - \$117,200 - buildings \$57,700). 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).

The Taxpayers complaint about the high amount of taxes they must pay as a basis for an abatement is, however, without merit. The amount of property taxes paid by the Taxpayers were determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the

board will decide if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

If the taxes have been paid, the amount paid on the value in excess of \$174,900 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

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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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank and Janet Gregory, Taxpayers, and Chairman, Selectman for New Boston.

Dated: October 28, 1992

Melanie J. Ekstrom, Deputy Clerk

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