

Darrell D. Smith and Joyce M. Smith

v.

Town of Holderness

Docket No.: 8642-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$115,500 on a house with a 1.6-acre lot (lot 15). The Taxpayers also own an adjacent 3.23-acre lot (lot 20) that was assessed at \$23,100 (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(e); 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 Lot 15's assessment was excessive because:

- (1) it is accessed by a long, private road that is only accessible by 4-wheel drive during the winter and mud seasons, resulting in no fire,

police or ambulance services during such times;

- (2) an April, 1988 bank appraisal estimated Lot 15's value to be \$86,000; and
- (3) abutting properties were assessed less than Lot 15.

The Town argued the assessment was proper because:

- (1) Lot 15's highest and best use is as a seasonal dwelling, not year-round as used by the Taxpayers; and
- (2) two sales (1988 and 1989) demonstrate the added value of a view and Lot 15 has a very good view.

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the taxpayers paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers must make a showing of the Property's fair market value. This value will then be compared to the Property's assessment and the level of assessments generally in the Town. 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.

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The board finds the highest and best use of lot 15 is as a seasonal dwelling. Further, the board must look at the Taxpayers' entire estate to determine if the Taxpayers are paying a disproportionate share of taxes. Although Lot 15 may be overassessed, lot 20, which was not appealed, is found to be underassessed because the Town did not apply a view factor on the lot.

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Darrell D. and Joyce M. Smith, taxpayers; and Chairman, Selectmen of Holderness.

Dated: April 24, 1992

Melanie J. Ekstrom, Deputy Clerk