

Philip and Elsie Traxler

v.

Town of Antrim

Docket No.: 8649-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$52,000 (land \$33,800; buildings \$18,200) on a .34-acre lot with a camp (the Property). 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers met their burden of proof.

The Taxpayers argued the assessment was excessive because:

- (1) the lot is only .3 acres in size with over half of it under a PSNH powerline, limiting the utility of that area;
- (2) the Town under went a town-wide reassessment in 1993 and assessed the Property at \$69,900 and lowered the assessment in 1994 to \$56,900; and
- (3) lots of larger size are not assessed proportionately more for the larger size and greater area outside the powerline.

The Town argued the assessment was proper because:

- (1) four neighboring properties have been assessed by the same methodology and the assessments are slightly greater for their larger size and utility; and
- (2) the Property's assessment-record card was corrected to reflect the absence of a well in 1990.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$48,800 (land \$30,600; building \$18,200). This assessment is ordered because the proportionally larger size of the area under the powerline requires further adjustment to the land value. We find a -10% additional reduction should be made to the land (no well, septic only). The 100% equalized market value would then be approximately \$82,700 ($48,800 \div .59$ - the 1990 equalization ratio).

If the taxes have been paid, the amount paid on the value in excess of \$48,800 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the

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reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Philip and Elsie Traxler, Taxpayers; and Chairman, Selectmen of Antrim.

Dated: June 2, 1994

Valerie B. Lanigan, Clerk

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