

Alfred E. and Karen Brown, Jr.

v.

Town of Canaan

Docket No.: 8659-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$42,800 (land only) consisting of approximately 26.04 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 granted.

Note: The board has determined, based on the Taxpayers' July 9, 1991 letter that stated an inventory was filed, that the Taxpayers met all filing requirements.

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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased for \$45,000 in June 1983, under the assumption that the Property included a right-of-way across the railroad's property;
- (2) the Property may not have a right-of-way and would be landlocked;
- (3) the access issue is being litigated in the superior and supreme courts; and
- (4) the Property should not be assessed as a buildable lot because of the access issue.

The Town argued the assessment was proper because:

- (1) the Taxpayers' purchased the Property for \$45,000 in June, 1988, and that was an arms-length transaction, which is the best evidence of market value; and
- (2) until a court ruling establishes the Property lacks access rights, the assessment is appropriate.

Board Rulings

Based on the evidence, we find the Taxpayers proved their assessment was disproportional. The ordered assessment is \$25,750. This assessment is ordered because the assessment should have been adjusted to reflect the negative effect the title issue, concerning the right-of-way (ROW), had on the Property's April 1, 1990 value. Certainly, the ROW issue had a detrimental impact on value.

The parties would have us wait to decide this appeal until the courts resolve the ROW issue. However, the board concludes a decision can be made now. The 1990 assessment depended on the information available on April 1, 1990. The ROW issue was known to exist then, but it was not yet resolved. Thus, the Property could not be assessed as landlocked because the Taxpayers'

still had a cognizable claim of a ROW. The Property could not, on the other hand, be assessed as if it had an established ROW. Therefore, we calculated the

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assessment as if the entire lot was accessible back land (26.04 acres x \$1,500 x .88 x .75 = \$25,780). Obviously, if it turns out that no ROW exists, the assessment for subsequent years would be lowered, and if the ROW exists, the assessment would be increased.

If the taxes have been paid, the amount paid on the value in excess of \$25,780 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 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

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alfred and Karen Brown, Jr., Taxpayers; and Chairman, Selectmen of Canaan.

Dated: May 11, 1993

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Melanie J. Ekstrom, Deputy Clerk