

Henry J. and Margo McKone

v.

Town of Francestown

Docket No.: 8987-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments on two lots: Lot 87, a 60-acre lot with a barn with .4 acres assessed ad valorem and the remaining land assessed in current use; and Lot 105, a 16.5-acre lot with a house with 1.6 acres assessed ad valorem and the remaining land assessed in current use. 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 this burden and prove disproportionality.

The Taxpayers agreed with the building values, but argued the land assessments were excessive because:

- 1) Lot 87 has 50 acres of swamp and ledge;
- 2) the taxes have more than doubled in 1 year and the assessment increase was more than the average increase in the Town;
- 3) a neighboring 60-acre parcel was assessed at less than \$7,500;
- 4) the status of a property owner influences the assessed value; and
- 5) larger properties with similar views were assessed much lower than the Property.

The Town argued the assessments were proper because:

- 1) the per-acre value depends, among other things, on size, accessibility and buildability and two, 60-acre lots will not have the same value;
- 2) a property's view greatly affects its value;
- 3) the Taxpayers' comparable (Tamposi) is not comparable because it is backland acreage with no buildable possibilities;
- 4) a vacant, 3.18-acre lot sold for \$72,500 in October, 1989;
- 5) assessments were based on many factors which do not include a person's status; and
- 6) the same methodology was used throughout the Town.

Board's Rulings

The issue involved in this appeal is whether the board has jurisdiction to issue an abatement on the ad valorem assessment even if the Taxpayers did not pay taxes on that assessment. The selectmen and this board can only abate taxes that were actually assessed to the Taxpayers. RSA 76:16.

Both parties focused their arguments on the calculated ad valorem assessments

rather than on the assessments upon which the actual taxes were based.

Therefore, the information provided by both parties was generally irrelevant.

Since the Taxpayers did not raise any arguments concerning the current-use values, we are left with the question of whether the ad valorem assessments on the two lots were appropriate. This means the questions are:

- 1) was the \$216,800 ad valorem assessment on Lot 87 (1.6 acres assessed at \$83,000; building and extra features \$133,800) disproportional?; and
- 2) was the \$70,000 ad valorem assessment on Lot 105 (.4 acres assessed at \$61,200; barn \$8,800) disproportional?

The Taxpayers did not present any evidence concerning the assessment upon which their taxes were assessed. Furthermore, the Taxpayers did not present any evidence on the Properties' value as a whole, i.e., land and building. Therefore, the board finds the Taxpayers failed to carry their burden.

(Note: Concerning the updated property map, the board gave this map no weight because the 1990 taxes were based on the not-in-current-use acreages stated above.)

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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Henry J. and Margo McKone, Taxpayers; and Chairman, Selectmen of Frankestown.

Dated: March 25, 1993

Melanie J. Ekstrom, Deputy Clerk

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