

Estate of Ellen G. Fabian Barry

v.

Town of Holderness

Docket No.: 9255-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$856,900 (land \$1,020,000; current-use credit \$269,100; buildings \$106,000) on a 21-acre lot with two camps (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to meet the burden of proof.

The Taxpayer argued the assessment was excessive because:

- (1) the conservation easement on the Property affects the value of the 2.6 acres not in current use by \$43,000;
- (2) the conservation easement restricts development of the Property thereby reducing its value; and
- (3) for unrestricted property, the valuation is reasonable but the conservation easement has a definite effect of around \$200,000 to the lot.

Estate of Ellen G. Fabian Barry

v.

Town of Holderness

Docket No.: 9255-90PT

Page 2

The Town argued the assessment was proper because:

- (1) the Taxpayer's appraisal of the ad valorem value is virtually the same as the Town's, therefore, there is no need for an ad valorem adjustment before current use or conservation easement credits; and
- (2) assessment with adjustments is fair.

Board's Rulings

Based on the evidence, we find that the conservation easement does not reduce the fair market value of the 2.6 acres not in current use. A conservation easement arguably could add value to the 2.6 acres not in current use as it would serve as a guarantee that no further development is possible, thus increasing the value of the improvement and the land not in current use. The Taxpayer did not submit any evidence to show the conservation easement adversely affected the area not in current use. The appraisal valued the loss to the Property as a whole without any allocation between the components of the Property. The board also declines the Taxpayer's suggestion that the \$203,000 value of the conservation easement should be applied before deducting the current use value and smacks of pie a la mode or having your cake and eating it too! The Taxpayer was taxed based on current-use assessments, and thus, the ad valorem value of the current-use acreage, reduced by the conservation easement, is not an issue before the board.

Estate of Ellen G. Fabian Barry

v.

Town of Holderness

Docket No.: 9255-90PT

Page 3

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

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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 Richard V. Fabian, Jr., Agent for the Estate of Ellen G. Fabian Barry, Taxpayer; and Chairman, Selectmen of Holderness.

Dated: 9/2/93

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Valerie B. Lanigan, Clerk