

Philip R. Ross and Grace S. Ross

v.

Town of Danville

Docket No. 5055-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$220,450.00 (land, \$174,550.00; buildings, \$45,900.00) on a single-family home on 1.5 +/- acres of land with pond frontage (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 201.04(e); Appeal of Town of Sunapee, 125 N.H. 214, 217 (1985). We find the Taxpayers carried this burden and proved they were disproportionally taxed.

The Taxpayers argued the assessment was excessive because:

- (1) the land was wet;
- (2) the runoff from other lots and the road adversely affected the Property; and
- (3) problems with the septic system purportedly caused by various sources of water, e.g., the pond and the runoff adversely affected the Property's value.

The Town argued the assessment was supported by the data used in revaluing the Town and the Property, including the land value and pond-frontage value. The Town, however, admitted an additional 5 percent depreciation could be given to the land because of the water issues. The Town also testified the septic system, if not functioning, would be assessed as a holding tank at \$500.00.

The board's inspector inspected the property, reviewed the property tax card, and filed a report with the board. This report concluded the proper assessment should be \$201,200.00. The report made adjustments for topography and the water problems.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be \$207,725.00 (land \$165,825.00 and building \$41,900.00). This assessment is based on the following:

- (a) depreciating the land by an additional 5 percent to \$165,825.00; and
- (b) reducing the septic value from \$4,500.00 to \$500.00.

We note the Town's assessment would be correct except for the water and septic problems. These septic problems, however, could be curable, and if cured, the assessment could again be increased. For example, if the Town solved the runoff problem from the road, the assessment could be increased. Additionally, if the Taxpayer corrected the septic problem, which warrants an opinion of a septic contractor, the assessment could again include the value of a working septic system.

If the taxes have been paid, the amount paid on the value in excess of \$207,725.00 shall be refunded with interest at six percent per annum from date paid to refund date.

February 5, 1991

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to Philip R. and Grace S. Ross, the Taxpayers, to the Chairman, Board of Selectmen, Town of Danville, and to Richard Young, DRA.

February 5, 1991

Michele E. LeBrun, Clerk