Leslie Petruno and Linda Furbush

v.

Town of Goshen

Docket No.: 6975-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $95,350 (land, $71,100; buildings, $24,250) consisting of a .29-acre lot with a one-story house on Rand Pond Road (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, 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 is for seasonal use;

2) the Property's site valuation is too high;

3) the Property cannot have a septic system, but has a holding tank;

4) the water level prevents the Property from having a well;

5) the building has structural problems as a result of drainage problems due

to lack of road maintenance;

6) the replacement value is too high;

7) comparable sales indicate assessment is too high;

8) comparable (Gagnon) received structural adjustment for similar problem;

9) the Property is not as good as comparables because it abuts a large campground;

10) Taxpayers' opinion of value is in the $70,000 range; and

11) the Taxpayers have listed the Property starting at $94,000 in 1990 and presently at $80,000 without any interest.

The Town argued the assessment was proper because:

1) reductions were given after the informal review correcting the land calculation and the listing of the dwelling;

2) the Property is a maintained town road, but not improved, for which a 30% adjustment was given for the road condition and seasonal access;

3) lake water is available; and

4) the Property was appraised at its present use, not its potential use.

Board's Rulings

Based on the evidence, we find the correct assessment should be $88,300 (land $64,050 and building $24,250).

The Town submitted an analysis of the seven Rand Pond sales from which the base, land values were derived (Exhibit TN-A). The three sales of undeveloped lots required substantial adjustments for size, condition or buildability and were not heavily relied upon by the Town. The four sales of

developed properties were of cottages or dwellings with operating septic systems and varying water supplies. From those four sales, residual land prices of $1,000 for waterfront and $500.00 for rear lots were derived, using

the New Hampshire Department of Revenue Administration's (DRA) land tables. The DRA land tables allow a minimum of -5% to a maximum of -10% for the difference between a developed lot and an undeveloped lot. Additionally, for developed lots, $4,500 was added for a septic system or $1,000 for a holding tank.

The consistent evidence submitted in the 30 Rand Pond appeals was that septic systems were difficult and expensive to construct due to the small size of many of the lots and limiting soil conditions. Those with modern systems are of the expensive "pump up" design. Many developed lots have only holding tanks because the lots cannot support septic systems. Some of the small undeveloped lots have such severe ledge or drainage conditions or abut existing water supplies that installing a septic system would be impossible or economically infeasible.

Based on these facts, the board finds the DRA undeveloped factors and the septic and holding tank values do not adequately account for the difference in market value between properties with septic systems and those that are undeveloped or have only a holding tank. These value differences should reflect not only the "cost to cure" but also any uncertainty the market would perceive in valuing such properties when compared with properties with septic systems.

Therefore, the board finds the undeveloped factor for this Property

should be reduced an additional 10%.

No further adjustment is warranted because:

1) regardless of the conflicting evidence as to the legal status of the road, the Town's 30% adjustment for seasonal access and lack of road maintenance

was reasonable;

2) the Town's adjustments to the building following the informal review were reasonable based on the evidence; and

3) the board was not convinced the market would recognize abutting a campground with extensive frontage on the pond was any less desirable than being amongst the general congested development pattern of the balance of the pond.

If the taxes have been paid, the amount paid on the value in excess of $88,300 shall be refunded with interest at 6% per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Leslie Petruno and Linda Furbush, Taxpayers; Department of Revenue Administration; and Chairman, Selectmen of Goshen.

Dated: January 28, 1993

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Valerie B. Lanigan, Clerk

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