

Mortimer S. and Martha W. Johnson

v.

Town of Goshen

Docket Nos.: 7350-89 and 11041-91 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1991 assessments of \$81,650 (land, \$62,800; buildings, \$18,850) on a .14 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 assessments were 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).

The Taxpayers argued the assessments were excessive because:

- 1) the Property only has lake water;
- 2) the lot is quite ledgy and rocky, preventing any upgrading of the cottage and installation of a septic system;
- 3) the Property has a holding tank; and
- 4) front-foot price on the Pond is too high.

At the hearing the Town recommended an additional 5% topography adjustment for the rocky water access.

The Town argued the revised assessment was proper because the Property's front-foot value is proper and within the range of comparable sales.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$72,450 (land \$53,600 and building \$18,850). This assessment is ordered because:

- 1) the Town's additional 5% for topography is reasonable; and
- 2) the board finds the undeveloped factor for this Property should be reduced an additional 10%.

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

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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.

If the taxes have been paid, the amount paid on the value in excess of \$72,450 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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mortimer S. and Martha W. Johnson, Taxpayers; Department of Revenue Administration; and Chairman, Selectmen of Goshen.

Dated: January 28, 1993

Valerie B. Lanigan, Clerk

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