

Gordon Terwilliger

v.

Town of Goshen

Docket No.: 7351-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessments of Map 209 Lot 18 of \$200,100 (land only) on a 45.32 acre lot, and Map 209 Lot 54 of \$196,400 (land, \$182,400; buildings, \$14,000) on a 1.5 acre lot with a two room ridge roof cottage (the Property). For the reasons stated below, the appeal for abatement on Map 209 Lot 54 is granted and for Map 209 Lot 18 is denied.

The Taxpayer has the burden of showing the assessments were 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).

Map 209 Lot 18

The Taxpayer argued the assessment was excessive because:

(1) the zoning ordinance prohibits building on land more than 25 percent in grade and where the grade is between 15 and 25 percent, a special exception is required;

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(2) approximately 11 acres of the land has a 25 percent grade and 5.8 acres have 18 to 25 percent grades;

(3) the Property has no deeded rights to any property to get to the lake;

(4) the Property only has the potential to subdivide into 3 lots; and

(5) based on the appraisal report prepared by Bruce A. Taylor, MAI, which is a part of the record and need not be summarized in this decision, the fair market value is \$124,000.

The Town argued the assessment was proper because:

(1) the land has ample frontage and zoning would permit subdivision into 6 or 7 lots;

(2) some areas of the Property are steep and a topography adjustment of .60 was applied;

(3) an excess frontage adjustment of .50 and an undeveloped adjustment of .80 were also applied; and

(4) on August 20, 1990, two lots totaling 8 acres were sold for \$70,000 with a 15 foot right-of-way over Lot 54 to the lake.

Map 209 Lot 54

The Taxpayer argued the assessment was excessive because:

(1) zoning ordinances require 3 acres for a house lot and this Property is a grandfathered cottage lot on 1.55 acres of land; and

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(2) based on the appraisal report prepared by Bruce A. Taylor, MAI, which is a part of the record and need not be summarized in this decision, the fair market value of Map 209 Lot 54 is \$127,000.

The Town argued:

(1) a topography adjustment of .70 was applied because the lot is rocky and an excess frontage adjustment of .78 was applied (based on an average lot size of 100 x 100); and

(2) the Property lacks an adequate septic system and the Town recommends reducing the undeveloped depreciation of .70 for a total land value of \$159,700.

Further, the Town argued that looking at the two lots as a package, the total recommended assessment is fair and consistent with the rest of the properties in the Town.

Board's Rulings

Map 209 Lot 18

We find the Taxpayer failed to prove the Property's assessment was disproportional. The board finds the Town made adequate adjustments to the Property. Further, the sale of two lots in 1990 with the conveyance of an easement to the lake over Lot 54 supports its value.

Map 209 Lot 54

Based on the evidence, we find the correct assessment should be \$173,700 (land \$159,700 and building \$14,000). This assessment is ordered because the

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Town's review and recommendation at the hearing of reducing the undeveloped factor on the Property to .70 because it lacked an adequate septic system is reasonable. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

Further, the board must look at the Taxpayer's entire estate to determine if the Taxpayer is paying a disproportionate share of taxes. In this case, the fact that the Taxpayer owns a lakefront lot with the potential to develop Lot 18 with deeded conveyances to the lake must be considered.

If the taxes have been paid, the amount paid on the value in excess of \$173,700 for Map 209 Lot 54 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert S. Moody, Esq., Representative for the Taxpayer; and Chairman, Selectmen of Goshen.

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Dated: March 29, 1993

Valerie B. Lanigan, Clerk

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ORDER

The Board of Tax and Land Appeals received a motion to rehear the above captioned matter dated April 16, 1993. The board's decision was dated March 29, 1993. The request is timely filed.

With respect to the assessment on map 209, lot 18 (45.32 acres) the Taxpayer agrees that lot 18 has no deeded access to the lake and that the town made no adjustment for that fact.

Upon reconsideration, the board agrees that the fact the Taxpayer has another lot on the water over which easements could be granted for subdivided lots in the future is not the same or as valuable as having a lot with deeded rights to the lake.

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Therefore, the board adjusts the assessed value on map 209, lot 18 by -25% to recognize the absence of any deeded right to the water.

Deeded rights to water access can vary dramatically effecting the value of backland depending upon the distance to that point of access and the quality of

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that access (size, shape of the frontage, sandy, rocky, shallow, deep, available docks and moorings etc.). \$200,000 x .75 = \$150,000 correct 1989 assessment.

The board finds no further adjustment is required to Map 209, lot 54 beyond that which was granted in the March 29, 1993 decision based on the Town's recommended -30% adjustment for an inadequate septic system.

Refund on the value in excess of \$150,00 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Robert S. Moody, Esq., representative for the Taxpayer; and Chairman, Selectmen of Goshen.

Dated:
0008

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ORDER ON REHEARING MOTION

The Board of Tax and Land Appeals (board) received a motion for rehearing in the above-captioned matter from the taxpayer who says in part:

"The assessment of Map 209, Lot #18 was improperly arrived at. The representative of the Town of Goshen admitted at the hearing that the assessment for the property was based on a value per front foot on the assumption that the backland in 1989 had a deeded access to Rand Pond. The town could not support this assumption with evidence and in fact, the lot shown on Map #29, Lot #18 in 1989 had no deeded access to the pond."

The board made no finding that lot 18 had "deeded access to the pond," but rather that "the sale of two lots in 1990 with the conveyance of an easement to the lake over lot 54 supports its value."

With respect to Map 29, Lot 54, the board notes differing square-foot

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assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary

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for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

Further, the board must look at the Taxpayer's entire estate to determine if the Taxpayer is paying a disproportionate share of the local tax burden.

Motion for rehearing denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date,

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postage prepaid, to Richard S. Moody, Esq., Taxpayer's representative; and
Chairman, Selectmen of Goshen.

Dated:

Valerie B. Lanigan, Clerk

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