

John R. Damon and Beverly F. Damon

v.

Town of Fitzwilliam

Docket No. 7438-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessments of \$32,000, \$22,600 and \$2,000 (all land only) on parcels identified as Map 4 - lot 21, Map 4 - lot 26 and Map 4 - lot 38-1, respectively (the Property).

Map 4 - lot 21 consists of 58 unimproved acres on Turnpike Road, 53 of which are assessed in the current use wetlands category and 5 acres at market value.

Map 4 - lot 26 consists of 7.2 unimproved acres on Turnpike Road, 5.7 of which are assessed in the current use wetlands category and 1.5 acres at market value.

Map 4 - lot 38-1 consists of .43 unimproved acres on Rte. 2.

The Taxpayers own six other parcels in Fitzwilliam that were not appealed. 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 they were disproportionally taxed.

The Taxpayers argued:

- (1)the land not in current use on lot 21 was overassessed as it was a sandy knoll along the railroad right of way and it was questionable whether it could support a septic system;
- (2)the land not in current use on lot 26 consisted of an old gravel pit area that had been taken down to or near the water table and thus would need

fill to support a septic system;

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(3)the 1.5 acres on lot 26 was kept out of current use to lease to an individual to store bark; however, the land was subsequently deemed too wet for even that use; and

(4)lot 38-1, being only 27 feet deep, had no value as the Town's setback requirements were 50 feet and there was not access from Rte. 12.

The Town argued:

(1)the five acres out of current use on lot 21 appeared to be well above the surrounding wetlands and would likely support a septic system and thus had a house site value;

(2)however, a mathematical error had been made on lot 21 and the correct assessment should be \$31,600;

(3)lot 26 was an abandoned sand pit and appeared to be usable as a house lot; and

(4)lot 38-1 had value to abutters for assemblage and the \$2,000 assessment recognized that limited utility.

Based on the evidence, including the board's inspector's report, we find the correct assessment should be:

lot 21 - \$31,600; lot 26 - \$15,350; and lot 38-1 - \$1,000. This assessment is ordered because:

Lot 21: the Taxpayers failed to reasonably prove the lot could not support a septic system; the Town's description of the five acres was convincing that it was above the water table enough to support residential development.

Lot 26: the Taxpayers' evidence was convincing that this parcel would be difficult to develop without significant fill; thus an adjustment of -30 percent on the one acre site and -50 percent on the .5 acre supplemental land is warranted, resulting in a correct assessment of \$15,350.

Lot 38-1: the title questions raised by the Taxpayers and the lot's very limited utility due to access and zoning setback dimensions reduce this parcel to a minimal abutter's value; these factors warrant an additional 25 percent topography adjustment and result in a proper assessment of \$1,000.

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If the taxes have been paid on lots 21, 26, and 38-1, the amount paid on the value in excess of \$31,600, \$15,350 and \$1,000, respectively, shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to John R. Damon and Beverly F. Damon, taxpayers; and Chairman, Selectmen of Fitzwilliam.

Melanie J. Ekstrom, Deputy Clerk

Date: February 19, 1992

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