

William J. and Ann M. Moreth

v.

Town of Rindge

Docket No.: 7626-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$167,700 (land, \$140,400; buildings, \$27,300) on a 1.6 acre lot with a seasonal dwelling (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 a seasonal camp on 1.5 acres of land with a shared well and a private road shared between 7 other camps on the lake;
- (2) the 7 camps share the maintenance costs of the private road and the shared well;

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(3) the rear property is pastureland with deed restrictions - John Weidner has access for use as grazing, farming, and the right to pass through until 1999;

(4) the Property is the smallest of all the 7 camps and is assessed the second highest;

(5) the water frontage is unusable except for 20 feet, the remainder is rocks, trees, shrubs; and

(6) the fair market value as of April 1, 1989 is \$130,000.

The Town argued the assessment was proper because:

(1) the assessments on the lake were arrived at through a sales analysis of two lakefront sales and one sale with deeded beach rights;

(2) a ten percent adjustment was made to the land for the private right-of-way which bisects the Property and the deed restrictions; and

(3) the building assessment addresses the fact that it was a seasonal facility and was depreciated for lack of insulation.

#### **Board's Rulings**

Based on the evidence, we find the correct assessment should be \$146,050 (land \$118,750 and building \$27,300). This assessment is ordered because:

(1) the board adjusted the topography on the land to 70 percent as there was no evidence that the topography on this Property was different from the abutters;

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(2) a 10 percent depreciation for the private right-of-way bisecting the land is warranted; and

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(3) a 10 percent depreciation for the deed restriction on the backland is warranted.

If the taxes have been paid, the amount paid on the value in excess of \$146,050 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

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William J. and Ann M. Moreth, Taxpayers; Department of Revenue Administration; and Chairman, Selectmen of Rindge.

Dated: November 19, 1992

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Valerie B. Lanigan, Clerk

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