

John and Jean Anderson

v.

Town of Goshen

Docket Nos.: 7659-89 and 11133-91 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1991 assessments of \$33,900 (land only) on Map 209, Lot 64 (Lot 64) a .23-acre lot; and \$88,700 (land, \$71,750; buildings, \$16,950) on Map 209, Lot 65 (Lot 65) consisting of a .20-acre lot with bungalow cottage. 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:

LOT 64

- 1) the lot is triangular in shape;
- 2) because the Town has taken some of the lot by expanding the road, the Property is now unbuildable;
- 3) the lot's acreage is incorrect on assessment-record card;

4) the lot has no right-of-way to the water; and

John and Jean Anderson v. Goshen
Docket No.: 7659-89
Page 2

5) Lot 64 was worth \$19,000 (1989), \$3,000 (1990) and \$2,400 (1991).

LOT 65

1) the lot is ledgy and steep;

2) the lot cannot have a septic system;

3) the cottage has no foundation or insulation;

4) the Property uses pond water;

4) the lot's topography should be reduced by 10%;

5) Taxpayers' opinion of value in 1989 is \$53,000; and

6) the Town corrected the lot size in 1991 from .22 to .20-acres and lowered the assessment by 18% and these adjustments should be made for 1989 and 1990.

The Town argued the assessments were proper because:

LOT 65

(1) Lot 65 was given a land adjustment of 15%;

(2) Lot 65 has contiguous ownership;

(3) Taxpayers' argument that ledge causes Lot 65 to be unbuildable -- there is a building on the lot;

(4) both lots were given an adjustment for topography;

(5) the Town does not make retroactive decisions; and

(6) the assessments on both lots were reduced.

Board's Rulings

Based on the evidence, the board viewed this as a single lot, see RSA 75:9, because of the problems that both lots have, especially Lot 64's shape and size. We

find the correct assessment should be a total of \$95,000 on both lots. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the John and Jean Anderson v. Goshen Docket No.: 7659-89 Page 3

market views value. However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the Taxpayers paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

The board did not accept the Taxpayers' argument that the right-of-way has encroached on their property due to lack of evidence. Finding an encroachment would require examining the title records and the Town's road lay-out and the Town's historic records, which is obviously beyond the scope of our review.

Based on evidence submitted by the Taxpayers, the board finds the survey was discoverable by the Town before the end of the 1989 tax year. Thus, the physical description of the land contained on the survey is applicable to both years under appeal. See 76:14.

If the taxes have been paid, the amount paid on the value in excess of \$95,000

shall be refunded with interest at 6% per annum from date paid to refund date. RSA

76:17-a.

John and Jean Anderson v. Goshen

Docket No.: 7659-89

Page 4

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gary Karp, Representative for the Taxpayers; Department of Revenue Administration; and Chairman, Selectmen of Goshen.

Dated: January 21, 1993

Valerie B. Lanigan, Clerk

0004