

John Dustin

v.

Town of Goshen

Docket No.: 13836-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$33,400 (land only) on Map 20-7 and the adjusted assessment of \$71,250 (land \$59,300; buildings \$11,950) on Map 209-8 (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

1) the Property was purchased in October 1993 for \$54,000 and was an arm's-length transaction;

- 2) the cottage is only 3-seasons and barely liveable (lacks heating system, insulation, floors are rotting, etc);
- 3) the Property is across the street from the pond (no view or waterfront);
- 4) an appraisal indicated a fair market value of \$55,000 as of October 15, 1993; and
- 5) based on comparables of other property in the area a proper assessment would be \$54,000.

The Town inspected the camp and adjusted its value from \$21,900 to \$11,900 to reflect its poor condition and utility.

The Town argued the revised assessment was proper because:

- 1) Taxpayer's purchase price was from an estate and not an arm's-length transaction; and
- 2) the assessment was equitable compared with similar properties around the pond that also have right-of-way to the waterfront.

BOARD FINDINGS

Based on the evidence, the board concludes the two separately assessed abutting lots should be assessed as one estate (see RSA 75:9) with an assessment of \$87,300 (land \$75,350; buildings \$11,950).

The board bases its conclusion that the lots should be assessed as one estate on the three following facts: 1) the Property was purchased by the Taxpayer as one property; 2) the Property was appraised with the Sugar River Savings Bank as one property; and 3) the board reviewed and took official notice of Town tax map #209, submitted with the Julia B. Sterns v. Goshen (Docket #7639-89PT) case, which indicated by a dashed line that lots 7 and 8 (the Property) were held in common ownership.

Combining the assessment-record cards and using 175 feet of frontage, an average unit depth percent of 1.22, an average topography adjustment of .80, an excess frontage adjustment of .87 and an undeveloped factor of .92 results in a total land assessment of \$68,350. Adding the well and septic value of \$7,000 and the assessment of \$11,950 results in a total assessment of \$87,300. The board also considered and gave some weight to the Taxpayer's purchase of the Property for \$54,000 in September of 1993. Little evidence was submitted as to whether the transaction was reflective of market value other than the Taxpayer saying it was an arm's-length sale and the Town saying it was a transfer from an estate. However given the additional evidence of the Sugar River Savings Bank appraisal, a notation in that appraisal of a land sale for \$30,000 in 1993 and the poor condition of the camp, the board concludes that the sale should be given some weight in determining the proper assessment.

Neither party challenged the Department of Revenue Administration's equalization ratio of 142% for the 1993 tax year for the Town of Goshen. Applying that ratio to the assessment of \$87,300 indicates a market value of approximately \$61,500 ($\$87,300 \div 1.42$). Thus the board finds assessing the Property as one lot arrives at an assessment that is generally supported by the 1993 sale.

If the taxes have been paid, the amount paid on the value in excess of \$87,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. This, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John Dustin, Taxpayer; and Chairman, Board of Selectmen.

Dated: September 26, 1995

Clerk

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John Dustin

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Town of Goshen

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ORDER

This order responds to the "Town's" rehearing motion, which is denied for failing to state how the board erred as a matter of law or fact. See RSA 541:3-5. The Town questioned the board's order to assess the two lots as one lot. Assessments must be based on market factors, see RSA 75:1, and in this case the board concluded the market would view the two lots as one property. The lots may be treated separately for land-use purposes, but that does not mean the lots must be assessed separately if the market views the two parcels as one property.

In addition to the reasons in the decision, the board finds the Town's 3-acre minimum lot size and the need for on-site septic and well also supported the conclusion that this property should be valued as one lot. Certainly any prospective purchaser of the property would want the .34-acre lot (map 209, lot 7) to help ensure that a well and septic could be located on the property.

Additionally, any separate sale of lot 7 would require the purchaser to go to the ZBA for approvals, including a variance given the set-back requirements

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specifically the side-yard requirements in section 3 D. (2), which requires 40-foot sidelines for small buildings (a term not defined in the ordinance but which we assumed included a house).

Based on these factors and the factors in the decision, the board finds it was proper to order the lots be assessed as one parcel.

Finally, concerning the Town's comment on RSA 75:9. While the Town is correct that RSA 75:9 refers to properties that do not adjoin, cases that have discussed RSA 75:9 also discuss lots that do adjoin. E.g., Fearon v. Town of Amherst, 116 N.H. 392 (1976).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John Dustin, Taxpayer; and Chairman, Board of Selectmen.

Date: November 30, 1995

Valerie B. Lanigan, Clerk

John Dustin

v.

Town of Goshen

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ORDER

This order responds to the Taxpayer's December 19, 1995 letter, which the board treats as a motion to enforce in accordance with TAX 203.05 (j). The board denies the Taxpayer's motion.

The board issued a decision in the Taxpayer's 1993 appeal of this Property granting an abatement to an assessment of \$87,300. The board was aware, based on the exhibits and photographs submitted in that appeal, that the cottage was undergoing renovations subsequent to the 1993 tax year. Towns can make good faith adjustments to the board's ordered assessment due to physical changes in the Property, see TAX 203.05 (c) (3).

The assessment the Taxpayer is complaining of is for the 1995 tax year. The Taxpayer included in his motion a new appraisal as of August 1995 which

indicated a market value of \$78,000. The board notes that the 1994 equalization ratio (1995 has not been calculated by the Department of Revenue Administration yet) was 1.44. In general terms, this ratio indicates the assessments in Town were generally 44% above market value in 1994. Applying this ratio to the Towns' 1995 assessment of \$123,400 provides an indicated market value estimate of

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\$85,700 ($\$123,400 \div 1.44$). Unless the Town has undergone a general reassessment or update in 1995, this application of the 1994 ratio indicates that the appraised value and assessed value, once equalized, are not significantly different.

Based on the information provided by the Taxpayer, the board did not feel a hearing was necessary to resolve his motion for enforcement. However, if the Taxpayer feels a hearing is necessary, he can request one in a motion for rehearing relative to this order.

Lastly, the board would also note the Taxpayer has recourse in appealing the 1995 assessment, first to the Town (within two months of notice of tax) and then either to the board or superior court (within eight months of notice of tax). RSA 76:16, 16-a and 17.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John Dustin, Taxpayer; and Chairman, Board of Selectmen.

Date: January 17, 1996

Valerie B. Lanigan, Clerk

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