

Paul D. and Martha Heusser

v.

Town of Goshen

Docket No.: 15389-94PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 assessments of: \$25,600 (land \$24,300; buildings \$1,300) on Lot 27, a .23-acre lot with a trailer; and \$20,850 on Lot 28, a vacant .22-acre lot (the Properties). The Taxpayers also own, but did not appeal, another vacant lot in the Town with a \$350 assessment. The Taxpayers 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 abatements 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried this burden.

The Taxpayers argued the assessments were excessive because:

(1) the trailer on Lot 27 is removable and the assessment includes a value for a lake water connection when there is none;

(2) the Properties and another vacant lot were listed for sale as one lot for \$25,575 and are currently listed for \$15,000 with no interested buyers;

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(3) an 8.94-acre lot with 404' of frontage sold in September 1993 for \$18,000 and an 8.95-acre lot with 244' of frontage sold December 1993 for \$21,000;

(4) Lot 27 was purchased in September 1984 for \$7,500 to construct a cottage; Lot 28 was purchased in April 1986 for \$6,000 after finding that Town regulations prevented Lot 27 from being improved;

(5) the increased taxes are difficult to pay, especially after a disability in 1992 resulted in the loss of employment;

(6) the Properties have an assessment-to-market ratio of 310% when the town-wide ratio is 142%;

(7) the Town's comparable front-foot prices are on waterfront lots and not comparable to the Properties; and

(8) a vacant 1.4-acre lot sold in 1994 for \$12,380, indicating values in the area continue to decline.

The Town argued the assessments were proper because:

(1) the assessments have not changed since the board ordered an abatement in 1993 except to deduct the value of a holding tank removed after the board's decision was rendered;

(2) front-foot values comprise the bulk of value and the Taxpayers' front-foot values are consistent with the abutters; and

(3) the Properties' market values fluctuate as the Town's equalization ratio

fluctuates; the assessment has remained constant since 1993.

**BOARD'S RULINGS**

The board finds the assessment for the two lots under appeal and the contiguous third lot not under appeal should total \$30,240 based on a market value estimate of \$21,000. The board's estimate is based on the following findings.

The board finds the highest and best use for the three Properties would be to consider them as a single economic unit. This would produce the highest selling price in an open market. The Taxpayers submitted evidence that the original lot purchased was not of sufficient size to allow development and

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that it was necessary to acquire the abutting lot. The fact that the Town has assessed the lots as one economic unit during the subsequent revaluation supports this position.

The Taxpayers indicated in their brief that the Properties had been listed for sale for an extended period of time at a reduced price, due to personal financial considerations, with little or no interest shown by prospective purchasers. The listed price is lower than the board's estimated market value. This situation is some evidence that the Properties are overassessed.

The Town has had a revaluation performed in 1996 and the revised assessment supports a reduced market value. (The board requested a copy of the 1996 property-record card; a copy is attached.) This new assessment is also some evidence that the 1994 combined assessments are excessive and need to be reviewed. RSA 75:8 states assessments should be annually reviewed and

adjusted if certain assessments have declined or increased more in value than values generally changed in the Town. RSA 75:8 states:  
The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in the year next preceding, and shall correct all errors that they find in the then existing appraisal \*\*\*.

See also, 73:1, 73:10, 74:1, 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). Due to the relatively small size of the town and the correspondingly small number of sales that occur, it is understood that this task is a difficult one to perform. However, this does not preclude the Town from fulfilling its obligation, especially with those properties that file an abatement request.

The Taxpayers should not be assessed for a lake water connection if none exists. Additionally, the small travel trailer should not be assessed as

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it has less than 320 square feet of area. RSA 674:31 specifies that to be taxable as "manufactured housing", a unit must be 320 square feet or more and be connected to required utilities.

**674:31 Definition.** As used in this subdivision, "manufactured housing" means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a.

If the taxes have been paid, the amount paid on the value in excess of \$30,240 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995 and 1996. 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.

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.

Thus, 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul D. and Martha Heusser, Taxpayers; and Chairman, Selectmen of Goshen.

Date: May 22, 1997

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Valerie B. Lanigan, Clerk

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**Paul D. and Martha Heusser**

**v.**

**Town of Goshen**

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**ORDER**

This order responds to the "Taxpayers'" June 3, 1997 motion for clarification of the board's decision (Decision) dated May 22, 1997.

The Taxpayers inquired as to why the board did not adopt the assessment figure of \$15,800 determined by the department of revenue administration (DRA) during the 1996 revaluation of the "Town." It is important to remember that the question before the board was what was the proper assessment as of April 1, 1994, the tax year under appeal. In determining whether or not the Taxpayers were overassessed, the board considered all the information submitted by both the Town and the Taxpayers. The new assessment-record card for the "Property", done by the DRA during the town-wide revaluation in 1996 was one of several pieces of information submitted that the board considered in making its decision for the tax year under appeal. On the bottom of the assessment-record card submitted by the Taxpayers, the notation that the Property was for sale for \$21,000 was considered by the board as well as the

assessed value of \$15,800 determined by the DRA. Further, on page 4 of the Decision, it is stated that "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." Because the Town of Goshen underwent a revaluation and the revised assessments were effective for the 1996 tax year, the Decision applies to the 1994 and 1995 tax years only.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul D. and Martha Heusser, Taxpayers; and Chairman, Selectmen of Goshen.

Date: June 25, 1997

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Valerie B. Lanigan, Clerk

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