

**Zygmon and Joann Onacki**

**v.**

**Town of Canaan**

**Docket No.: 20507-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessments on the following:

- (1) \$125,700 (land \$91,900; buildings \$33,800) for Map 000I-F, Lot 42, a seasonal home on 3.870 acres on the east side of Goose Pond Road;
- (2) \$3,400 for Map 000I-F, Lot 96, a 0.03-acre lot on the west side of Goose Pond Road;
- (3) \$71,100 for Map 000I-F, Lot 43, a vacant 4.380 acre lot on the east side of Goose Pond Road; and
- (4) \$2,000 for Map 000I-F, Lot 95, a 0.02-acre lot on the west side of Goose Pond Road (collectively the “Properties”).

For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of

City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Properties' assessments were higher than the general level of assessments in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) Goose Pond Road divides most properties from Goose Pond to the west with the homes to the east; the Town has disproportionately assessed properties with land on both the east and west side of the road when compared to properties that do not have land on the west side of Goose Pond Road;
- (2) the department of environmental services (DES) owns all land around Goose Pond to an elevation of 107.5 feet;
- (3) in order to access the lake, a five-year license must be acquired through the New Hampshire Water Resources Council ("NHWRC") of DES at an annual fee of \$2.50 per foot per year; the Properties do not currently have a license;
- (4) the Town did abate Lot 42 by \$20,700 but the adjustment was made to the building value; the building value should be reinstated and the adjustment should be made to the land value by reducing the condition factor to 300; and
- (5) Lot 43's land condition for the first acre should be adjusted from a condition factor of 450 minus 25% (cost of development) to 300 minus the cost of development for a total of \$45,000; adding the value of \$3,500 for the remaining 3.38 acres would indicate a total assessed value of \$48,500.

The Town argued the assessments were proper because:

- (1) in granting an abatement to the Properties, the Town did not want to disturb the land tables established during the 2003 reassessment so the adjustment was made to the building value;

- (2) the Town looked at the market to arrive at the total value for the Properties;
- (3) the Taxpayers do access the water even without a license; and
- (4) the Taxpayers have failed to show the Properties as a whole were disproportionately assessed.

At the hearing on December 8, 2005, three taxpayers (Jeffrey and Monica Allen v. Town of Canaan, Docket No.: 20438-03PT; Malcolm S. Love and Christine MacDonald v. Town of Canaan, Docket No.: 20453-03PT; Zygmon and Joann Onacki v. Town of Canaan, Docket No.: 20507-03PT) agreed that, due to the similarity of their properties and the issues raised in their appeals, the board could take official notice (RSA 541-A:33 V) of the records in the three proceedings. Consequently, the board's rulings in each of the three cases draw upon the testimony and evidence presented in all three appeals.

### **Board's Rulings**

While the testimony and evidence in this appeal and others involving Goose Pond related properties raise concerns as to the Town's assessment methodology, the board finds the Taxpayers failed to show the total assessment of their entire estate was disproportionately assessed.

The Taxpayers own four interrelated parcels. A 3.870 acre parcel improved with a seasonal cottage (identified as Map 000I-F, Lot 42) is located on the east side of Goose Pond Road opposite a 0.03 acre unbuildable parcel (identified as Map 000I-F, Lot 96) on the west side of Goose Pond Road (located between Goose Pond Road and the NHWRC land that encompasses the artificially impounded Goose Pond). Similarly, the unimproved Lot 43 (4.380 acres) is on the east side of Goose Pond Road opposite Lot 95 (0.02 acre) on the west side of Goose Pond Road. While the Town assessed the four lots distinctly, it is clear from their

proximity to Goose Pond and their interrelated usage, these four parcels have a highest and best use as two separate lots. Said another way, if sold, the highest and best use would be to sell Lots 42 and 96 as one lot and Lots 43 and 95 as another lot.

Consequently, to carry their burden the Taxpayers need to show the total assessed value of the four separately assessed lots are disproportionate to market value. Appeal of Sunapee, 126 N.H. 214 (1985) (The taxpayer's entire estate within a taxing jurisdiction must be considered in determining proportionality) After abatement, the combined assessed value of Lots 42 and 96 was \$129,100 and Lots 43 and 95 was \$73,100 or collectively \$202,200. The parties agreed the weighted mean equalization ratio determined by the department of revenue administration ("DRA") for tax year 2003 of 0.893 was a reasonable indication of the Town's level of assessment. Applying that ratio to the total assessed value of \$202,200 provides an indicated market value of \$226,428 ( $\$202,200 \div 0.893$ ). Despite some challenges to the Town's assessing methodology, the Taxpayers failed to present evidence that this total equalized market value was excessive.

The Taxpayers raised a number of issues, which the board will address in turn.

First, the Taxpayers argued they do not have true water frontage as most properties associated with lakes and ponds do in New Hampshire because Goose Pond is artificially impounded and the state owns the land around Goose Pond up to an elevation of 107.5 feet. Further, the Taxpayers assert the state rarely floods Goose Pond to such elevation and thus a strip of land is owned by the state between the actual water surface of Goose Pond and the 107.5 foot elevation. To obtain legal access to Goose Pond the Taxpayers must obtain a license from the NHWRC and pay an annual fee of \$2.50 per linear foot for such license.

While the juxtaposition of the NHWRC land and private land around Goose Pond may be unique from most other water bodies, the evidence presented indicates the market does not show any appreciable reduction in value because NHWRC owns a strip of land above the level of the water of Goose Pond. For example, the Allens' (Docket No.: 20438-03PT) purchased their property in 2000 in a private sale and were not made aware at the time of the purchase of this unique property relationship nor was the sale price expressly affected by it. Further, the photographs and testimony submitted in the three cases indicate individuals use Goose Pond for recreational purposes of swimming, boating etc. as most waterfront property owners do in New Hampshire. While there appears to be a requirement for individuals to obtain a license to access Goose Pond over land owned by the NHWRC, many individuals are either unaware of this requirement or have historically accessed Goose Pond without obtaining a license even if they were aware of it. In short, while this unique property relationship is a factor to be considered when valuing the property (Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (In valuing property, municipalities must consider all factors relevant to its value.)), the Taxpayers did not submit any evidence to show the NHWRC ownership of land and the licensing procedure significantly affected the market value of the Properties that is not already reflected in either the Town's assessment methodology, property specific condition factor adjustments or most importantly, the total assessed value of the Properties.

Second, evidence was submitted that the Town used similar condition factors for properties on Goose Pond as they did for properties on Canaan Street Lake, a water body generally agreed to be superior to Goose Pond. However, without market evidence relative to each water body, the board is unable to determine whether Goose Pond properties are over

assessed or Canaan Street Lake properties are under assessed or some of both.<sup>1</sup> As the board will discuss later, this total vacuum of market value data makes it extremely difficult for the board to determine whether the Town's land assessment methodology is market related or needs some revision. Thus, the fact the Taxpayers have presented some assessments on Canaan Street Lake being assessed in a similar fashion does not carry the Taxpayers' burden to show their assessment is disproportionate to market value.

Third, the Taxpayers argued the Town's assessment methodology distinction between properties that own adjoining land in fee on the west side of Goose Pond Road having a condition factor of 450 versus those that only hold an easement to such land having a condition factor of 300 is incorrect because the market does not show such a distinction between the owned access property and easement access property. As discussed during the hearing, the board notes that generally a fee ownership title to land is more desirable than an easement right. However, the board also notes (by reviewing the photographs submitted of the two different types of properties) that many taxpayers who have an easement across the NHWRC land enjoy rights to a larger area of land which allows for larger or better recreational accouterments such as decks and steps etc. Again, without market evidence, the board is unable to reach a definitive conclusion as to whether the Town's 450% condition factor for fee ownership versus 300% for easement ownership is appropriate. The Taxpayers' submitted no market evidence with the exclusion of one sale discussed in subsequent paragraphs. The Town also submitted no market evidence of properties presumably because its attempt to do so in one of the prior day's hearings resulted in

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<sup>1</sup> Review of the three Canaan Street Lake assessment-record cards submitted indicate the neighborhood code for two of the properties was "D" at 90% while one property located in the historic district had a neighborhood code of "I" at 140%.

the board sustaining the taxpayer's objection to such submission because the Town had not noticed the taxpayer of the comparables 14 days prior to the hearing as required by TAX 201.33(b). While the Taxpayers raise a legitimate question as to the difference in the condition factors and, thus the land value, that the Town's assessment methodology ascribed to the two different types of water access parcels, any error that may exist in the methodology does not necessarily result in a disproportionate assessment for the Properties under appeal (see cite and discussion of Porter v. Town of Sanbornton, 150 N.H. 363 (2003) in the following paragraph).

Fourth, the Taxpayers argued the Town should have granted an abatement on the land component and not the building as it did. While the Town's methodology in granting abatements in this and the other two appeals heard on December 8, 2005 is less than desirable, the Taxpayers still have the burden to show the resulting assessment in total is disproportionate. The supreme court's ruling in Porter is instructive.

To carry the burden of proving disproportionality, the taxpayer must establish that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The plaintiffs produced no evidence regarding the fair market value of their properties. Rather, they attempted to prove disproportionate tax burdens by demonstrating that the town employed a flawed method.

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We have long held that however erroneous, in law or in fact, the assessment may be, we will abate only so much of a taxpayer's tax as in equity the taxpayer ought not to pay. Edes v. Boardman, 58 N.H. 580, 586 (1879). This principle necessarily follows from the language of the statute that commands the abatement of a taxpayer's taxes as justice requires. *Id.* Justice requires that an order of abatement will not relieve the taxpayer from bearing his or her share of the common burden of taxation despite any error in the process of determining the amount of that share.

Id. at 368.

While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result.

Id. at 369.

Consequently, while the Taxpayers have raised genuine concerns as to the Town's methodology in granting the abatements, those concerns alone do not lead to a finding of disproportionality without probative evidence that the resulting total assessment is disproportionate to market value and the Town's level of assessment.

While the board has repeatedly noted that no market evidence was submitted and analyzed to establish a benchmark for determining whether the Taxpayers were proportionately assessed or not, one of the comparable assessment-record cards submitted in Docket No.: 20507-03PT (Map IF Lot 41A), indicates it sold in June 2004 for \$175,000 with an adjoining parcel providing access to Goose Pond. The parties testified this property consisted of a seasonal dwelling that was subsequently torn down to make room for a more modern, conventional dwelling. The Town argued this one sale was evidence of what the market was for essentially a land parcel because the dwelling was subsequently torn down. The Taxpayers argued that the sale was an anomaly and not consistent with the general market. While it is difficult to place significant weight on a single sale especially given the lack of certain first-hand knowledge of the motivations of the buyer and seller, it is some indication of what a small seasonal camp with deeded access to the waterfront sold for about a year subsequent to the year under appeal and, to this limited extent, supports the assessment. The Taxpayers had no evidence or opinion of market value of either of the two lots but did state that, in their belief, the assessed value exceeded market value. However, the board finds the total equalized value of \$226,428 for two separately transferable lots both of about four acres in size with access to

Goose Pond and one improved with a cottage does not seem unreasonable especially in comparison to the sale of one lot (Map 1F, Lot 41A) of approximately 2.9 acres with a cottage for \$175,000.

Consequently, the board concludes the Taxpayers have failed in their burden of showing the total abated assessed value is disproportionate.

Last, the board believes some general observations of the Town's assessing practices are in order. The Town testified it did not have in its possession any sales analysis or documentation of the neighborhood and/or condition factor methodology employed by Avitar Associates of New England, Inc. ("Avitar") during the 2003 assessment update. The Town indicated there had been a subsequent change in Town personnel and Avitar had discontinued providing service to the Town in the summer of 2005. This lack of documentation to provide market guidance to taxpayers, town officials or this board on appeal is unsatisfactory as the board has discussed in a number of recent reassessment orders (see, e.g., Town of Unity Reassessment, Docket No.: 19437-03RA; Town of Wilmot, Docket No.: 19503-03RA; and Town of Orford Reassessment, Docket No.: 21473-05RA). At hearing, the Town stated it recognized the need to perform a reassessment and has started plans to do one effective for 2006. The Town testified it is not currently in accord with the assessing standards board's guidelines for level of assessment as noted in the DRA's 2004 RSA 21-J:11-a review of its assessment practices. The board strongly encourages the Town to proceed with its plans for a complete market review and analysis as part of the 2006 update including a review of the physical data information contained on the existing assessment-record cards for accuracy. Hopefully, many of the assessment methodology concerns raised by the taxpayers in these appeals will be more appropriately addressed through a

complete market review than through individualized revisions in the abatement and appeal process.

A motion for rehearing, reconsideration or clarification (collectively “rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing 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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Zygmon and Joann Onacki, 28B Charles Street, Newburyport, MA 01950, Taxpayers; and Chairman, Board of Selectmen, Town of Canaan, PO Box 38, Canaan, NH 03741.

Date: 1/24/06

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Melanie J. Ekstrom, Deputy Clerk