

Elizabeth S. Perkins

v.

Town of New London

Docket No. 4607-88

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$279,000 (land, \$209,600, buildings, \$69,400) on her real estate identified as Map 30, Lot 7, consisting of a dwelling on a 16,000-square-foot lot on Little Sunapee Lake. The Taxpayer also owns, but did not appeal, a 10,400-square-foot parcel on the opposite side of Little Sunapee Road assessed for \$10,800 and identified as Map 30, Lot 18. For the reasons stated below, the appeal for abatement is denied.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden and prove any disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) thirty-seven percent of the lot was unusable due either to grade or soil conditions, or pavement encroachment by Little Sunapee Road; and

(2) the Town's comparables were not comparable due to their difference in location, quality and age of building, and in one case size of living area.

The Town argued the assessment was proper because:

(1) the slope to the water affords a view of the lake from the dwelling, has been improved to provide foot access and has been nicely landscaped; and

(2) sales on Little Sunapee Lake subsequent to the revaluation indicate that the assessments made without the benefit of good sales data prior to the revaluation are perhaps conservative by 10 percent to 15 percent.

We find the Taxpayer failed to prove her total assessment of all her property in New London was disproportional. We also find the Town supported the Property's assessment.

The Taxpayer's attorney and son, Arthur W. Perkins, in his closing, stated the Town's comparables did not justify the assessed value. The burden of proof, however, rests with the Taxpayer, not with the Town. The Taxpayer's only evidence as to the market value of her entire property was Mrs. Perkins' opinion of value, first estimated at \$145,000 for lot 7, and then indefinitely estimated at \$230,000 to \$290,000 for both lots.

A taxpayer has the burden to prove such disproportionality. Milford Props., Inc. v. Town of Milford, 119 N.H. 165, 166-67, 400 A.2d 41, 42 (1979). To carry this burden, he must establish that his property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town. Berthiaume v. City of Nashua, 118 N.H. 646, 647, 392 A.2d 143, 144 (1978). . . .When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment

of property generally in the town. Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 449, 102 A.2d 512, 5516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899) (citations omitted). Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The board rules that the parcel not appealed (lot 18) is underassessed. The Town's appraisal firm had appraised it as unbuildable, whereas the testimony at the hearing by the Town was that its highest and best use was to support accessory improvements for lot 7 (e.g., septic system, garage, shed, etc.) and by the Taxpayer that it was worth at least \$30,000. As a consequence, this underassessment casts a significant shadow over any claims of overassessment of the appealed parcel (lot 7).

Mr. Perkins' claims of overassessment are twofold:

- 1) thirty-seven percent of the lot is unusable.
- 2) the Town's sales are not comparable.

The board rules neither claim is of much weight.

First, the market does not, in most cases, analytically factor the usable versus unusable percentage of a lot. Concerns in the market are more general in nature such as: does the lot in its entirety have utility; how do its amenities, views, location, inherent limitations, etc., when considered together affect its desirability.

Second, while the sales submitted by the Town do differ from the Taxpayer's on some of the properties' features (location, size of lot, size and quality of building, age) they are similar enough to give some indication that the Taxpayer's assessment is reasonable. In fact, of the three comparables, the Taxpayer's house was the youngest of all three, graded a

higher quality index by the Town than two, given the least amount of depreciation, and had more water frontage than all three. In contrast, the facts the Taxpayer's lot is smaller than all three, the house is slightly smaller in livable area, and the property is on a different part of Little Sunapee Lake, tend to offset its positive features and lend credence to the Taxpayer's \$279,000 assessment being less than the sales prices of the comparables' range (\$300,000 to \$325,000).

Due to the lack of any convincing arguments by the Taxpayer and the underassessment of lot 18, the board denies the appeal and rules the Taxpayer's total assessed value is reasonable and proportional.

SO ORDERED.

July 22, 1991

BOARD OF TAX AND LAND APPEALS

—

George Twigg, III, Chairman

Paul B. Franklin

Michele E. LeBrun

I certify that copies of the within decision have been mailed this date, postage prepaid, to Elizabeth S. Perkins, the Taxpayer, and to the Chairman, Board of Selectmen, Town of New London.

July 22, 1991

Brenda L. Tibbetts, Clerk

