

Walter G. Ensign and Eleanor W. Ensign

v.

Town of New London

Docket No. 5202-88

DECISION

A hearing in this appeal was held, as scheduled, on May 15, 1990. The Taxpayers represented themselves. The Town was represented by David W. Bolton, Appraiser for M.M.C., Inc., Harold Buker, Jr., Selectman, Frederick Welch, Town Administrator, and April Whittaker, Selectmen's Secretary.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$278,600 (land, \$210,000; buildings, \$68,600) placed on their real estate, located on Camp Sunapee Road, for the 1988 tax year. The property consists of a .69-acre parcel on Little Sunapee Lake with two seasonal dwellings and is identified as Map 33, Lot 7A. The Taxpayers also own, but did not appeal the assessment, an adjoining parcel of 1.7 acres with a dwelling, identified as Map 33, Lot 7, with a 1988 assessment of \$429,800 (land, \$361,500; building, \$68,300).

Neither party challenged the Department of Revenue Administration's equalization ratio of 98 percent for the 1988 tax year for the Town of New London.

The Taxpayers argued they were overassessed based on a higher land value per acre being assessed on their smaller parcel (lot 7A) than was used to assess their larger parcel (lot 7). They further argued that lot 7A was ledgy and the frontage was steep and rocky. They further testified that due to

topography and

size of the lot and due to the placement of the structures and septic system, there was no place feasible to drill a well for the cottage. They stated that water had been supplied by the water district until the water district stopped serving the area in 1987 and 1988. Since then they stated that the well on lot 7 seasonally provided water to the cottage on lot 7A. In closing, the Taxpayers stated they felt the land value was more in the vicinity of \$150,000 as estimated by Bradford C. White, Broker, of White & White, Inc., in December, 1988.

Mr. Bolton recommended a correction of the land valuation based on the correct lot size and dimensions indicated by a survey of lot 7A done by Douglas H. Sweet. The revised land value was \$208,000. The Town submitted comparable sales, mostly on Pleasant Lake and Little Sunapee Lake, that sold in the range of \$250,000 to \$420,000 (Exhibit Tn A).

The Board rules as follows:

The Taxpayers' appeal is based on The Constitution of New Hampshire,

Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same

and RSA 75:1 (supp) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R.R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board finds that a direct unadjusted comparison of land values on a unit basis between two parcel of different sizes does not necessarily substantiate a claim of overassessment as the market generally recognizes a higher unit value for smaller parcels than larger parcels.

The Board finds that the estimate of value done by Bradford White is too brief in information to be probative evidence of market value.

However, the Board does find that the physical constraints of lot 7A and its existing improvements limit the ability to obtain an on-site water supply.

Based on the evidence and testimony, the Board finds that if lot 7A were to be sold independently of lot 7, any buyer would be faced with having to acquire additional land for a well site or an easement to an existing well or settle for drawing water from the lake. The Board rules that these options would

have a chilling effect on the price and thus rules that the Town's revised land value be adjusted by 10 percent for a correct land value of \$187,200.

For the above stated reasons the Board rules that the proper assessment for the 1988 tax year is \$255,800.

If the taxes have been paid, the amount paid on the value in excess of \$255,800 is to be refunded with interest at six percent per annum from date of payment to date of refund.

June 1, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Walter G. and Eleanor W. Ensign, the Taxpayers, to the Chairman, Board of Selectmen, Town of New London, and to David W. Bolton, M.M.C., Inc.

June 1, 1990

Michele E. LeBrun, Clerk