

Mona G. Garrand

v.

Town of Sunapee

Docket Nos.: 7895-89 and 10642-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$523,700 (land, \$440,700; buildings, \$83,000) on a year-round residence on 0.48 of an acre on Birch Point Lane (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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 carried this burden and proved disproportionality.

The Taxpayer's expert, Ms. Hulme, explained the general methodology used in appraising the Property. She testified she reviewed approximately 45 sales in the Town and in Newbury and New London. Ms. Hulme testified the market was not limited to the Town but included Newbury and New London.

The Taxpayer argued the assessments were excessive because:

- (1) the lot is situated in a cove with lots close on either side which limits privacy and the view;
- (2) the residence is year round, the basement is damp;
- (3) there is no well on the Property, water is from the lake;

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- (4) New England Telephone Company has an underground cable over the Property that goes into the lake and if needed they can come and disrupt the Property;
- (5) the Property was listed with three local realtors for three years at \$475,000 and no offers were made; and
- (6) the fair market value of the Property is \$440,000.

The Town explained the assessment methodology used throughout the Town, submitting several exhibits documenting the methodology. The Town asserted the same methodology was used throughout the Town, resulting in proportionate assessments. The Town then referred the board to specific sales to support the assessments.

The Town argued the assessments were proper because:

- (1) by time adjusting the Taxpayer's comparables by 1 percent per month arrives at adjusted values ranging from \$454,800 to \$496,400;
- (2) a 5 percent atypical adjustment to the Taxpayer's comparable #2 (Butter) is not warranted, the subject property is almost twice as large as the sale and there is an increase in value because of its size; and
- (3) the Town has attained assessment equity.

Board's Rulings

The board has reviewed the parties' memoranda on the time adjustments of sales (Exhibits TN-1 and TP-3) and finds the Town's arguments support the time

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adjustments used during the reassessment. The Town supported its adjustments in three ways:

- (1) by the use of paired sales;
- (2) by an analysis of sales (with time as a variable) to arrive at a median ratio of 99 percent and a coefficient of dispersion of less than 5 percent; and
- (3) by an analysis of the Department of Revenue Administration's (DRA) 1989 and 1990 equalization ratios for Sunapee and the surrounding towns. The

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board finds the Taxpayer's time adjustment arguments inconclusive as they were based only on the sales of similar property at different times.

Further, the board finds that the DRA's 1989 and 1990 ratios of 100% and 106% were derived from assessments that were, in part, based on the Town's time adjustments; thus to now find a different time adjustment would insert a new element of disproportionality relative to all other property in Town.

Based on the evidence, we find the correct assessment should be \$500,000. This assessment is ordered because the board found the Taxpayer's evidence that the Property was listed at \$475,000 for three years with no offers, along with the Town's argument that by time adjusting the Taxpayer's comparables, the high end of the range would be \$496,400 was credible and persuasive evidence. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

If the taxes have been paid, the amount paid on the value in excess of \$500,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George R. Moore, Esq., Representative for the Taxpayer; and Chairman, Selectmen of Sunapee.

Dated: August 14, 1992

Valerie B. Lanigan, Clerk

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