Peter P. Matthews and Gloria L. Matthews

v.

Town of Sunapee

Docket No.: 7901-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $253,400 (land, $177,900; buildings, $75,500) on a .052-acre lot with a house (the Property). The Town recommended an assessment of $242,900. For the reasons stated below, the appeal for abatement is granted to the Town's recommended assessment.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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).

The Taxpayers argued the assessment was excessive because:

(1) the Property is the second smallest lot on Lake Sunapee and the Town's rating of small lots is out of proportion to large lots;

(2) the cottage and garage fill almost the entire width of the lot with only three feet of land on either side;

(3) the lake is so close to the basement wall that a rock wall had to be erected to protect the house from the water;

(4) the fact that the Property has sewer increases its assessment significantly;

(5) the land should be assessed based on the average assessments of 18 lots in the area; and

(6) the value of the Property is approximately $130,000.

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 assessment.

The Town argued the adjusted assessment was proper because:

(1) a preliminary estimated value arrived at by Thompson Appraisal Company on this Property was $240,000;

(2) the Town does not average values and then assess property based on the average;

(3) with everything else being equal, the smaller the lot, the greater the per acre value;

(4) the Property cannot be compared to White Shutters as that consists of 17 small shared lots congested together and the subject is an individual lot, with full utility of the site; and

(5) the assessment could not be more fair or equitable.

Differing acreage assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates

higher acreage prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on an acreage basis to differ to reflect this market phenomenon.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally

in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

Based on the evidence, we find the Taxpayers failed to prove the Town's recommended assessment of $242,900 was disproportional. If the taxes have been paid, the amount paid on the value in excess of $242,900 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

_____ Ignatius MacLellan, Esq., Member

_____ 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 Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: August 14, 1992

_____ Valerie B. Lanigan, Clerk