William G. Berlinger and Ruth B. Berlinger

v.

Town of Sunapee

Docket No.: 7913-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $639,400 (land, $549,800; buildings, $89,600) on a single family residence on 2.9 acres of land on Birch Point Road (the Property). For the reasons stated below, the appeal for abatement is denied.

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). We find the Taxpayers failed to carry this burden.

The Taxpayers' 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 Taxpayers argued the assessment was excessive because:

(1) the lot is 2.9 acres with 297 feet of frontage on the lake and 370 feet of frontage on Birch Point Road and the lot cannot be subdivided;

(2) the site slopes down from Birch Point Road with a 50 foot drop in elevation to the house and gradual sloping to the lake;

(3) a seasonal cottage on the lot has 1,950 square feet, the first floor is 57 percent finished condition and the second floor is unfinished with open stud walls and ceilings;

(4) there is a problem with dry rot and carpenter ants;

(5) the Town has a pumping station located as an out parcel on the frontage of the Property and there is a definite problem with odors which limits the quality of the lot; and

(6) the fair market value of the Property is $570,000.

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 assessment was proper because:

(1) the land was reduced from a condition factor of 5.75 to 5.50 to account for the topography and the topography is no worse than in the most exclusive part of Town;

(2) the lot is not assessed for subdivision potential;

(3) the lot has 297 feet of lake frontage and 2.9 acres of land which is rare on Lake Sunapee;

(4) the Town has had no complaints about odors from town pumping stations and a recent comparable sale and resale of a property with a sewer pumping station

right next to it indicates there is no reason to consider economic depreciation on the building; and

(5) the assessment is fair and equitable.

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 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 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.

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, George R. Moore, Esq., representing the Taxpayers, to William G. and Ruth B. Berlinger, the Taxpayers; and to the Chairman, Board of Selectmen, Town of Sunapee.

Dated: September 1, 1992

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Melanie J. Ekstrom, Deputy Clerk

1002