

Frank and Barbara Nichol

v.

Town of Sunapee

Docket Nos.: 7945-89 and 10414-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessment of \$848,200 (land, \$536,400; buildings, \$311,800) on Map 18, lot 2 (1.4 acres), Fernwood Point Road consisting of 2,350 square feet year round residence and 520 square feet guest house (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- 1) the Town did not consider a 12' x 150' right-of-way through the Property;
- 2) the neighbors garage is within 6' of the Property line;
- 3) a drainage problem exists around the house and guest house;
- 4) consideration was not given for the lack of public water and sewer; and
- 5) an appropriate market value assessment should have been \$700,000.

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The Town argued the assessment was proper because:

- 1) the right-of-way does not have a negative impact on the Property and it provides access from the Taxpayers' son's adjacent lot (purchased in 1988);
- 2) the water frontage is one of the most desirable on Lake Sunapee;
- 3) other improvements include a 26' x 27' boathouse and two docks (12' x 37' and 4' x 37') as well as a 26' x 36' garage and tennis court; and
- 4) Town comparable sales, 17, 19, 30, and 33 support the assessments.

Board Findings

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

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.

With respect to the Taxpayers reference to a "drainage problem around the house and guest house," no evidence was presented as to the economic impact on market value, (i.e., cost to cure, etc.).

The Taxpayers did not quantify the economic impact of the neighbors garage being six feet from the Property line. The Taxpayers raised concerns

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about certain alleged oversights in the assessment. However, the Taxpayers did not show these oversights resulted in disproportionality. "Justice does not require the correction of oversights of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

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

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank and Barbara Nichol, Taxpayers; and

Chairman, Selectmen of Sunapee.

Dated: January 14, 1994

Valerie B. Lanigan, Clerk

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