Margaret M. and Edward V. Banas, Sr.

v.

Town of Sunapee

Docket Nos.: 7953-89 and 10667-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of $512,300 (land, $326,400; buildings, $185,900) on a year-round, contemporary house with a .26-acre lot on Lake Sunapee (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were 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 carried this burden and proved disproportionality.

The Taxpayers argued the assessments were excessive because:

(1) the home was built in 1986 for $135,800 with some fill, cutting of trees and terracing;

(2) the Town discriminated against the "lake people" by increasing the lake front assessments more than other assessments in the Town; and

(3)the Property should not be graded as a "class 3" neighborhood, especially given: (a) the abutting 9-unit hotel property, which causes traffic and noise; (b) the road traffic; and (c) the boat noise.

The Taxpayers' arguments concerning comparables were not accepted because the Taxpayers had failed to notify the Town of the comparables within ten (10) days of the hearing. See Tax 201.03(e).

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.

Based on the evidence, we find the correct assessment should be $493,100 (land $307,200 and building $185,900). This assessment is ordered because the board concluded the hotel has a negative impact that was not reflected in the condition factor. See Paras v. Portsmouth, 115 N.H. 63, 68 (1975) (all factors affecting value must be considered). Thus, the condition factor was reduced from 4.25 to 4.0. The Town had not made any adjustment, and thus, the board was required to reduce the condition factor by .25.

Further adjustment is not warranted because the Taxpayers did not present any credible evidence of the Property's fair market value. 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.

Concerning the Taxpayers' claim of assessment increases, increases from past assessments are not evidence that a taxpayer's property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

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).

If the taxes have been paid, the amount paid on the value in excess of $493,100 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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Margaret M. and Edward V. Banas, Sr., Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: July 27, 1992

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Valerie B. Lanigan, Clerk