

William L. and Edith S. Loring

v.

Town of Sunapee

Docket Nos.: 7955-89 and 10595-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$539,500 (land, \$393,000; buildings, \$146,500) on a cape style dwelling on 0.29 of an acre on Birch Point Road (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' 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 assessments were excessive because:

(1) it is a 0.29 of an acre lot with 85 feet of frontage on the lake with access to the lot over a 15 foot right-of-way across an abutting lot;

(2) the right-of-way is blocked at numerous times preventing access to the residence;

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- (3) the Property is improved with a year-round cape style residence and garage;
- (4) privacy is limited with abutters on both sides and to the rear of the Property and an adjoining property owns a 15 foot strip of lake frontage and part of their deck is on the subject Property; and
- (5) the fair market value of the Property is \$475,000.

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) much of the difference in the Town and Taxpayers' values hinges on the value of the right-of-way;
- (2) the right-of-way was not viewed as a detriment because the Property has legal access, is insulated from traffic along the road, and the Taxpayers have the legal means to have the right-of-way unobstructed;
- (3) the Taxpayers also have the legal right to have the abutter's deck removed that is impinging on their property; and
- (4) if you time adjust the comparables used by the Taxpayers, it indicates the Town's assessment is proportional.

Board's Rulings

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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;

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(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.

Based on the evidence, we find the correct assessment should be \$512,500. This assessment is ordered because the board finds that the access right-of-way over an improved property in close proximity creates the potential for inconvenience and lack of privacy and has made a 5 percent depreciation to the entire Property. 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

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\$512,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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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, to George R. Moore, Esq., Representative for the Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: August 13, 1992

Valerie B. Lanigan, Clerk

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