

John W. and Mary C. Warren

v.

Town of Sunapee

Docket Nos.: 7960-89 and 10238-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$204,600 (land, \$199,500; improvements, \$5,100) on a 0.31 of an acre of land with a private dock 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 argued the assessments were excessive because:

- (1) there is no house or building on the lot;
- (2) zoning requires a 15 foot setback from either side and you could only build a 20 foot wide building or put a mobile home on the Property;
- (3) it is difficult to use the sewer line without a house and would prefer to be off the sewer line;

John W. and Mary C. Warren

v. Town of Sunapee

Docket Nos.: 7960-89 and 10238-90

Page 2

(4) you can't see the lake from the lot until you get within 20 yards of it; and

(5) the Property is only worth \$150,000.

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) the sewer is a benefit and the Property would most likely receive a variance allowing the building of a structure 35 feet wide; and

(2) it is assessed at the lower end of the market because of the shape, topography and utility of the lot and a condition adjustment was made for those factors.

Based on the evidence, we find the correct assessment should be \$150,000. This assessment is ordered because the board finds the most credible testimony was the Taxpayers based on the limitations for building on the long, narrow lot. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and existing submerged dock) because this is how the market views value. However, the existing assessment process allocates the total value between land value and dock value. (The board has not allocated the value between land and the dock (which needs some adjustment for physical depreciation)). The Town shall make this allocation in accordance with its assessing practices.

John W. and Mary C. Warren

v. Town of Sunapee

Docket Nos.: 7960-89 and 10238-90

Page 3

The Town contended that as a result of an informational meeting between the Town's Zoning Board of Adjustment and the Warrens, an opinion was expressed by the Board and Michael Marquise who "feel that with a special exception, a 35 foot wide house could be built on the subject 50 foot wide lot (in spite of 15 foot minimum setbacks from each side boundary) which would leave a 7 1/2 foot clearance between the house and each side line.

The issue of fair market value based on an assumption that a Special Exception could be granted becomes even more speculative in light of the fact that the Board acknowledged, "The Board cannot give a Special Exception or variance to a future owner. They can give them to the Warrens if they want to build on the lot." The Board finds that no owner should be forced to exercise a somewhat speculative Special Exception which could result in either an unwanted, unneeded or unmarketable improvement.

The Board finds the highest and best use of the subject 50 foot x 241 foot lot to be access to the lake, and nothing more, until such time as someone actually builds on the lot.

If the taxes have been paid, the amount paid on the value in excess of \$150,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

John W. and Mary C. Warren

v. Town of Sunapee

Docket Nos.: 7960-89 and 10238-90

Page 4

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 John W. and Mary C. Warren, Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: July 22, 1992

Valerie B. Lanigan, Clerk

0007

John W. and Mary C. Warren

v. Town of Sunapee

Docket Nos.: 7960-89 and 10238-90

Page 5

John W. and Mary C. Warren

v.

Town of Sunapee

Docket Nos.: 7960-89 and 10238-90

MOTION FOR RECONSIDERATION

On August 4, 1992, the Board of Tax and Land Appeals ("Board") received a motion for reconsideration from consulting assessor Gary J. Roberge, on behalf of the town, in the above-captioned matter.

The motion is denied for the following reasons.

The highest and best use of the subject lot (50' wide and 341' long) based on the evidence and testimony is its present use: to provide water access to Lake Sunapee.

The highest and best use also described as the **most probable use** of the subject is determined by such related factors as:

(1) difficulty and likelihood of siting a dwelling (seasonal or year round) on

John W. and Mary C. Warren

v. Town of Sunapee

Docket Nos.: 7960-89 and 10238-90

Page 6

a 50' wide lot with 15' sideline setbacks leaving a maximum 20' building width, facing the lake;

(2) topographical features which would require a house design aesthetically disappointing and inordinately expensive to build (site work and construction costs);

(3) as a matter of functional utility, an owner of the subject lot would be unlikely to build any dwelling owing to the limitations of privacy imposed by the 50' width for the entire length of the lot (341'); and

(4) given all of the reasons previously cited, it is highly probable that on April 1, 1989 and April 1, 1990, the cost to build and develop the subject lot would far exceed the fair market value of the Property.

John W. and Mary C. Warren

v. Town of Sunapee

Docket Nos.: 7960-89 and 10238-90

Motion for Reconsideration

Page 7

The board takes this opportunity to correct a typographical error in its July 22, 1992 decision.

The third paragraph on page 3, in its entirety, should read as follows:

"The Board finds the highest and best use of the subject 50' x 341' lot to be access to the lake, and nothing more."

The lot is a classic "bowling alley" configuration. The fact that someone might be able "to erect a structure on a lot and flush a toilet", does not necessarily create a buildable lot from an economic prospective. The lot could be buildable and still have "water access" as its highest and best use.

Highest and best use requires three standards of review. In order to support a proposed highest and best use, all three of the following criteria must be answered in the affirmative:

- (1) Is it physically possible?
- (2) Is it legally permissible?
- (3) Is it financially feasible?

The Board rules the buildable lot theory fails on the 3rd criteria.

Motion Denied.

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 motion for reconsideration has been mailed this date, to John and Mary Warren, Taxpayers; Chairman, Selectmen of Sunapee; and Gary J. Roberge, Avitar.

John W. and Mary C. Warren

v. Town of Sunapee

Docket Nos.: 7960-89 and 10238-90

Motion for Reconsideration

Page 8

Date: August 20, 1992

Valerie B. Lanigan, Clerk

0007