

Esther M. and Deane W. Carstensen, Jr.

v.

Town of Sunapee

Docket No.: 7968-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$591,600 (land, \$357,100; buildings, \$234,500) on their real estate on West Shore Rd., consisting of a year-round dwelling on a .44 acre lot on Lake Sunapee (the Property). The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayers argued, in their application for abatement, the assessment was excessive because:

(1) land assessment not consistent with similar pieces of property in the neighborhood and also not consistent with market value; and

(2) an Osgood property was assessed significantly less than the Taxpayers.

The Town explained the assessment methodology used throughout the Town, submitting several exhibits documenting the methodology. The Town asserted

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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 at the hearing recommended a revised assessment of \$587,600 (land, \$357,100; buildings, \$230,500) to correct a mistake in the listing of docks.

The Town argued the assessment was proper because:

- (1) the Property is a good quality house and well landscaped with a nice beach and stonework;
- (2) the Property was consistently appraised as similar waterfront year-round property in this area; and
- (3) the Osgood property was underassessed in 1989 due to a data entry error which was subsequently corrected.

Based on the evidence, we find the correct assessment should be \$587,600 (land \$357,100 and building \$230,500). Other than the correction recommended by the Town at the hearing, the board finds the Taxpayers failed to prove the Property's assessment was disproportional.

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 of Sunapee. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986);

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Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The board finds the Taxpayers' Property was not overassessed as corrected. However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to

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reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties.

E.g., Id.

If the taxes have been paid, the amount paid on the value in excess of \$587,600 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

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Esther M. and Deane W. Carstensen, Jr., Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: August 14, 1992

Valerie B. Lanigan, Clerk