Dur-Ham Corp.

v.

Town of Sunapee

Docket Nos.: 7971-89 and 10659-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of $379,900 on a camp with a .34-acre lot (the Property). The Town recommended an adjustment to $346,500. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer's 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 Taxpayer argued the assessments were excessive because:

(1)the access is via a long staircase;

(2)parking is only on Lake Avenue;

(3) the topography is steep and rocky;

(4) the frontage is rocky;

(5) the building is unfinished with certain deficiencies;

(6) the Property was offered for sale in 1989 (after revaluation was announced) for $325,000 and in 1990 for $279,000 without any takers; and

(7)the Taxpayer's appraiser valued the Property at $300,000.

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 adjusted assessment was proper because:

(1) the change in condition factor adequately adjusted for the problems raised by the Taxpayer;

(2) it was supported by certain sales; and

(3) it was proportional to other assessments.

Based on the evidence, we find the correct assessment should be $330,000. 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.) This assessment is ordered because:

(1)the site difficulties (slope, access, parking) and seasonal unfinished aspects of the cottage warrant a lower valuation; and

(2)this assessment is supported by the Taxpayer's listings of the Property (with appropriate time adjustments).

If the taxes have been paid, the amount paid on the value in excess of $330,000 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 George R. Moore, Esq., Representative for the Taxpayer; and Chairman, Selectmen of Sunapee.

Dated: July 27, 1992

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Valerie B. Lanigan, Clerk