

Klaus & Joan Schoellner

v.

Town of Sunapee

Docket No.: 7982-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$445,700 on a 1.4-acre waterfront lot with a house (the Property). 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 the assessment was excessive because:

- (1) the assessment went up significantly from the prior assessment;
- (2) the lot is steep, has wetlands, is on a shallow cove, has rocks in the water and is adjacent to a right-of-way for Oak Ledge held by Whitney & Johnson;
- (3) the waterfront valuations were inconsistent compared to the values on non-waterfront lots; and

(4) the land assessment on the Property is the same as that on lot 5, a superior lot.

Klaus & Joan Schoellner

v. Town of Sunapee

Docket No.: 7982-89

Page 3

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 assessment.

The Town admitted the condition factor should be reduced to 3.00 to reflect the Taxpayer's concerns. The Town argued the assessment, using a 3.00 condition factor, would be proper because:

- (1) the Town adjusted the land and the amenity value to reflect the unique nature of the Property, e.g., in Fisher's Bay but on the water; and
- (2) it would be proportional to other assessments and in line with the market data.

Based on the evidence, we find the correct assessment should be \$401,000 (land and amenity \$318,200 and building \$82,300). This assessment is ordered because the Town's adjustment to the condition factor brought the assessment in line with the Property's value and other assessments. While the adjustment did not address all of the Taxpayers' arguments, the board cannot make further adjustment because of the lack of market evidence to support further adjustments. Basically, the Taxpayers did not present any evidence of the Property's fair market value. Had the Taxpayer introduced market evidence of the Property's value, we would have compared that value 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,

Klaus & Joan Schoellner

v. Town of Sunapee

Docket No.: 7982-89

Page 4

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.

If the taxes have been paid, the amount paid on the value in excess of \$401,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Klaus & Joan Schoellner

v. Town of Sunapee

Docket No.: 7982-89

Page 5

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 Klaus and Joan Schoellner, Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: August 28, 1992

Melanie J. Ekstrom, Deputy Clerk

0007