

Elizabeth G. Boyd and Jean Boyd

v.

Town of Sunapee

Docket Nos.: 7984-89 and 10236-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$528,900 (land, \$450,000; buildings, \$78,900) for 1989 and \$527,400 (land, \$448,500; buildings, \$78,900) for 1990 on a 1.45-acre lot on Lake Sunapee with a house and extra features (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) the Property is not on a public road, but on a private right-of-way;
- (2) the water access is shallow;
- (3) the lot has some very swampy areas and poor topography;

(4) the view is limited;

(5) installing a new septic system or hooking up to the sewer, if permissible, would be prohibitive;

(6) the land-building differential is excessive; and

(7) a realtor estimated the value in February, 1988, at \$365,000.

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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 Property is on one of the most undeveloped properties in the Town; and
- (2) the 5.0 condition factor considers the Property's problems except for the septic problem.

The Town, however, admitted some adjustment might be needed because of the septic issue.

Based on the evidence, we find the correct assessment should be \$450,000. This assessment is ordered because the Town failed to adequately adjust the assessment for the septic issue and because, based on the board's experience and knowledge of Town property values, the assessments were excessive.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their 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 assessments and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee,

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126 N.H. at 217-18. The realtor's letter was insufficient to show the Property's 1989 and 1990 fair market value.

If the taxes have been paid, the amount paid on the value in excess of \$450,000 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

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Elizabeth G. and Jean Boyd, Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: August 13, 1992

Valerie B. Lanigan, Clerk

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