

Stephen R. Low and Barbara B. Low

v.

Town of Sunapee

Docket No.: 8061-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$429,600 (land, \$350,700; buildings, \$78,900) on a single family ranch on 0.42 of an acre of land on Woodland Road (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 and submitted a lengthy report to support their conclusions. The Taxpayers argued the Property was worth approximately \$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 assessment.

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The Town argued the assessment was proper because:

- (1) market value cannot be arrived at by strictly looking at the size of property and the amount of frontage it has;
- (2) the Taxpayers do not consider location, access, quality of improvements, views and other amenities;
- (3) a Town comparable, Buzzell, supports the assessment;
- (4) the moisture problem is a curable functional problem;
- (5) the Taxpayer probably has right-of-way by prescription; and
- (6) it was fair.

Based on the evidence, we find the correct assessment should be \$406,825 (land \$331,200 and building \$75,625). This assessment is ordered because:

- (1) the condition factor should be reduced by .25 because of the driveway issue; and
- (2) an additional 5% should be taken off the building because of the moisture problem in the lower rooms.

The lack of a deeded right to use the existing driveway certainly affects value. To cure this problem, the owner would need to take steps: (a) to establish or purchase the right to use the existing driveway, or (b) to build another driveway.

The board finds the Taxpayers' valuation of \$300,000 to be without merit or support. The Taxpayers did not present any credible evidence of the Property's fair market value at \$300,000. To carry their burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been

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compared 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, 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.

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If the taxes have been paid, the amount paid on the value in excess of \$406,825 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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Stephen R. and Barbara B. Low, Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: August 25, 1992

Valerie B. Lanigan, Clerk