Lawrence R. Cahill and Lisa G. Cahill

v.

Town of Sunapee

Docket No.: 8084-89

Lawrence Cahill

v.

Town of Sunapee

Docket No.: 8085-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of $372,900 (land, $267,400; buildings, $105,500) on Map 16 Lot 31, a .38-acre lot on Lake Sunapee with a house (docket no. 8084-89) and the 1989 assessments of $43,200 on Map 16 Lot 30 a 0.82-acre lot, and $91,000 (land, $87,400; dock, $3,600) on Map 16 Lot 30-1 a 0.021-acre lot with dock (docket no. 8085-89). These appeals were consolidated for hearing.

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 on Lot 30-1 when viewed with Lot 30. However, we find the Taxpayers failed to carry this burden on Lots 30 and 31.

The Taxpayers argued, among other things, that the assessments were excessive because:

Map 16 Lot 31

(1) the Property was purchased on May 21, 1987 for $90,000 and in 1988 the cottage was renovated and winterized at a cost of $77,000;

(2) there is no frontage on a public way and only 79.6 feet of water frontage;

(3) access to Woodland Road is via a driveway easement; and

(4) comparables support its overassessment.

Map 16 Lot 30

(1) there are no buildings on the Property, no access to Lake Sunapee and no views of the Lake;

(2) there is a driveway easement, a sewer easement and power line easement across the Property;

(3) comparables of vacant parcels support its overassessment;

(4) the highest and best use is as a buffer for Lot 31; and

(5) its value is in the range of $25,000 to $30,000.

Map 16 Lot 30-1

(1) the lot is not buildable and is useable only in connection with the adjacent Lot 31 on which the cottage is located; and

(2) the lot lacks legal access.

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.

Two main factors control this decision: 1) the lack of market data from the Taxpayer; and 2) the effect of the lack of unity of ownership.

First, the appeal has been denied on Lot 30 and 31 and only a 40% +/- adjustment to Lot 30-1 because the Taxpayers did not present any credible fair-market-value evidence. To carry their burden, the Taxpayers should have made a showing of the properties' fair market value. These values would then have been compared to the 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, 126 N.H. at 217-18.

Second, the Taxpayers would have us value the lots as one property. We cannot. See RSA 75:9 (authorizes unity of assessment when there is unity of ownership). If the Taxpayers want to be taxed as one lot, they can take steps to create unity of ownership. Since the lots are legally separate lots they have been viewed as such. We have, however, viewed Lots 30 and 30-1 as a package because that would be their highest use.

Based on the evidence, we find the correct assessment on Lot 30 and 30-1 should be $103,600. This assessment is ordered because the assessment on Lot 30-1 must be lowered to $60,000 due to access issues. We reject the Taxpayers' argument that Lot 30-1 does not have considerable value as a waterfront lot. Yes, there are problems with access, but a purchaser could sue to seek to establish access or buy access. This value is inherent in Lot 30-1 and adds value to Lot 30. It is irrelevant that these Taxpayers would not grant access. The board must consider what the market would do to obtain the highest price. We also do not accept the Taxpayers' argument that if Lot

30-1 had access Lot 31's value would be significantly reduced. Nothing was introduced to support such a conclusion.

If the taxes have been paid, the amount paid on the value in excess of $103,600 on Lot 30 and 30-1 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

We find the Taxpayers failed to prove the Lot's assessment was disproportional. We also find the Town supported Lot 31's assessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lawrence R. and Lisa G. Cahill, taxpayers; and the Chairman, Selectmen of Sunapee.

Dated: August 25, 1992

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Valerie B. Lanigan, Clerk