

Michael and Olive L. Nemcovich

v.

Town of Sunapee

Docket Nos.: 8103-89 and 10701-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$477,300 (land, \$388,500; buildings, \$88,800) on a ranch style dwelling on 0.64 of an acre of land at Scotts Cove Road (the Property).

For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayers argued the assessments were excessive because:

- (1) the Property only has 75 feet of water frontage, less than other properties in the area and the land is assessed too high; and
- (2) a neighbor, Morrow, has deflected the usual course of drainage and it now flows over the Property.

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.

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The Town argued the assessments were proper because:

- (1) three sales, Buzzell, Nichol and Burton, support the assessments;
- (2) the ditch is a natural runoff of water in the spring, there is no leaching, and the course had been changed at the time the abutter (Morrow) built their garage;
- (3) the location and times that the drainage situation exists is not detrimental to the resale of the Property; and
- (4) the Morrow property went on Town sewer in 1989.

Board's Rulings

The Town testified the Property's assessments were arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this 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, 126 N.H. at 217-18.

While the board recognizes the Taxpayers concerns and the difficulties with the neighbor, we don't find the drainage situation would significantly affect the

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market value of the Property. We find the Taxpayers failed to prove the Property's assessments were disproportional.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael and Olive L. Nemcovich, Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: August 19, 1992

Valerie B. Lanigan, Clerk

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