

Andrew and Joan Coval

v.

Town of Sunapee

Docket Nos.: 7928-89 and 10647-90

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$524,000 (land, \$384,00; buildings, \$140,000) on their real estate, consisting of a year-round dwelling on a .61 acre lot on Lake Sunapee (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' expert, Ms. Hulme, explained the general methodology used in appraising the Property. She testified she reviewed approximately 45 sales in the Town and in Newbury and New London. Ms. Hulme testified the market was not limited to the Town but included Newbury and New London.

The Taxpayers argued the assessments were excessive because:

- (1) a culvert drains onto a portion of the lot making that area unusable;
- (2) the view from the property is across Jobs Creek inlet; the view to the main portion of the lake is partially blocked by a neighbor's boathouse;

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(3) the water is only five feet deep ten feet out from the shore and limits the use of the dock;

(4) different portions of the house were built at different times and resulted in several levels of living area; this was not adequately adjusted for by the Town;

(5) the abutters' structures are close to the Taxpayers' house; and

(6) an appraisal by Thompson Appraisal Co., Inc. estimated the market value at \$455,000 as of April 1989.

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 Buzzell sale is the most comparable and did not sell for an excess amount as stated by the Taxpayer's appraiser; and

(2) the lower level of the house was appraised at half the value as the main floor.

### **Board's Rulings**

The board has reviewed the parties' memoranda on the time adjustments of sales (Exhibits TN-1 and TP-3) and finds the Town's arguments support the time adjustments used during the reassessment. The Town supported its adjustments in three ways:

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(1) by the use of paired sales;

(2) by an analysis of sales (with time as a variable) to arrive at a median ratio of 99 percent and a coefficient of dispersion of less than 5 percent; and

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(3) by an analysis of the Department of Revenue Administration's (DRA) 1989 and 1990 equalization ratios for Sunapee and the surrounding towns. The board finds the Taxpayers' time adjustment arguments inconclusive as they were based only on the sales of similar property at different times.

Further, the board finds that the DRA's 1989 and 1990 ratios of 100% and 106% were derived from assessments that were, in part, based on the Town's time adjustments; thus to now find a different time adjustment would insert a new element of disproportionality relative to all other property in Town.

Based on the evidence, we find the correct assessment should be \$497,300 (land \$364,800 and building \$132,500). This assessment is ordered because:

1) the land condition factor should be reduced to 4.75 to account for the drainage situation as testified to by the taxpayers; and

2) 5 percent depreciation should be applied to the building replacement cost to reflect the obsolescence of the ground level bedrooms and the split level layout.

If the taxes have been paid, the amount paid on the value in excess of \$497,300 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

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to George R. Moore, Esq., Representative for the Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: August 14, 1992

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Valerie B. Lanigan, Clerk