

**Johanne T. Skelley**

**v.**

**Town of Sunapee**

**Docket Nos.: 7948-89 and 10646-90**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$610,800 (land, \$466,200; buildings, \$144,600) on her real estate at Fernwood Point consisting of a dwelling, cottage and garage on a .64 acre lot on Lake Sunapee (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden and proved disproportionality.

The Taxpayer's 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 Taxpayer argued the assessments were excessive because:

- (1) the property has limited privacy due the closeness of the abutting properties (structures on both sides are very close to the property lines);
- (2) the water frontage is shallow;
- (3) the abutter's boathouse partially obstructs the view to the southeast;

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(4) the house has only two bedrooms, long narrow layout and a wet basement;

(5) a court order imposed restrictions on the use of the garage to only car and hand tool storage; and

(6) an appraisal by Thompson Appraisal Co. Inc. estimated a market value of \$520,000.

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 assessments.

The Town argued the assessment was proper because:

(1) there is good access to the lake;

(2) if the taxpayer's comparables were properly adjusted for time and location, the indicated range of value would support the Town's assessment;

(3) the Town was unaware of the court ordered restrictions on the use of the garage and would recommend reducing its value to \$4,700; and

(4) based on market data, the presence of the second cottage contributed more to the overall value than just the building value; thus an additional .50 was added to the land condition factor.

### **Board's Rulings**

The board has reviewed the parties' memoranda on the time adjustments of

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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:

(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 Taxpayer's 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 \$580,950 (land \$446,800 and building \$134,150). This assessment is ordered because:

- 1) while the existence of a second living unit adds some value to the Property, the Town overstated its contributory value at \$61,100; thus the land condition factor should be reduced to 5.75;
- 2) the main house should receive an additional 5 percent functional depreciation for its layout; and
- 3) the garage value is reduced to \$4,700, as recommended by the Town, for the restrictions on its use.

If the taxes have been paid, the amount paid on the value in excess of \$580,950 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

Paul B. Franklin, Member

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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 Taxpayer; and Chairman, Selectmen of Sunapee.

Dated: August 14, 1992

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Valerie B. Lanigan, Clerk