

Adella L. Chesson

v.

Town of Sunapee

Docket Nos.: 7965-89 and 10599-90

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$304,800 (land, \$289,800; buildings, \$15,000) on her real estate on Jobs Creek Rd., consisting of a small cottage and dock on a .47 acre lot on Georges Mills harbor inlet of 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 argued the assessments were excessive because:

- (1) the Property is located in the commercial area (cottage colonies) of the Georges Mills harbor;
- (2) the cottage is only a 216 sq. foot one room building constructed in 1928;

(3) in 1985, the Taxpayer was denied a building permit for a larger cottage;

(4) the lot was not serviced by water or sewer in 1989, and the lot was not large enough to support a larger cottage due to zoning and septic setback requirements;

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(5) the Property had a boathouse that in 1987 burned; the Taxpayer has the right to rebuild the boathouse within five years;

(6) an appraisal by Thompson Appraisal Co., Inc. estimated the Property market value would have been \$280,000 if the lot was at that time able to support a septic system and a cottage; however, since the lot was not able to in 1989, a 10 percent reduction was given for the two years before sewer was available in 1991;

(7) only one third of the lot was usable due to slope; because of that, obtaining a special exception was not assured; and

(8) the septic system is only a gravel pit.

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 at the hearing recommended a revised assessment of \$286,700 (land, \$271,700; buildings, \$15,000) based upon a reduction of .25 in the land condition factor.

The Town argued the revised assessment was proper because:

(1) the Property has a grandfathered septic;

(2) under the zoning in existence in 1989, it is likely, based upon the special exception section of the ordinance, that the Taxpayer could obtain a permit to enlarge the cottage;

(3) no record of the Taxpayer being denied a permit in 1985 was found in the Town

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records; even if a permit had been denied, zoning was enacted after that time in 1987 with flexible special exception provisions;

(4) the Town was unaware of the Taxpayer's right to rebuild the boathouse within five years; if it had been, the land condition factor would have been .25 higher; and

(5) the Town has a prolific history of granting special exceptions.

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### **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:

(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

(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 \$286,700 (land \$271,700 and building \$15,000). This assessment is ordered because:

1) we find the Town's recommended adjustment is reasonable in light of the value to rebuild the boathouse (not accounted for in the Town's assessment) offsetting the uncertainty of being able to fully utilize the lot until the sewer was available in 1991;

2) if proper time adjustments, as discussed above, were applied to the Taxpayer's sales # 2 and 3, the resulting value would support the Town's recommended

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assessment.

If the taxes have been paid, the amount paid on the value in excess of \$286,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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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 Taxpayer; and Chairman, Selectmen of Sunapee.

Dated: August 19, 1992

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Valerie B. Lanigan, Clerk