

**Estate of George I. Wiggin**

**v.**

**Town of Sunapee**

**DECISION**

**Docket No.: 7992-89**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$553,800 (land, \$288,000; buildings, \$265,800) on .26-acre lot on Lake Sunapee with a house, boathouse and garage apartment (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was 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 disproportionally.

The Taxpayer argued the assessment was excessive because:

- (1) the Healy house has blocked the Property's view; and
- (2) the Healy land is assessed at \$225,000 while the Property's land assessment is \$288,000.

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 assessment(s).

The Town argued the assessment was proper because:

- (1) Town sales 22 and 27 both occurred in a no-swim zone (the Property being superior to the sales);
- (2) an additional structure was on the lot;
- (3) most lots in the no-swim zone have limited views; and
- (4) Healy is adjacent to a common lot for the Indian Cave.

Based on the evidence, we find the correct assessment should be \$534,600 (land \$268,800 and building \$265,800). The board reviewed all of the evidence, including the board inspector's report. The board has reduced the condition factor to 3.5, which is consistent with Healy. This adjustment was made because: the board did not adopt the Town's additional .25 condition factor for the four units. The Town already attributed .5 because of the additional structure. The board concluded there was no support for the additional .25.

The board did not adopt the board inspector's report because Mr. Estey was apparently unaware of how the Town calculates the condition factor. Additionally, The Taxpayer did not present any credible evidence of the Property's fair market value. The Taxpayer should have made a showing of the Property's fair market value. This value would have then been compared to the Property's assessment and the level of assessments generally in the Town of Sunapee. 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.

If the taxes have been paid, the amount paid on the value in excess of \$534,600 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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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ms. Mary Lou Wiggins, representative for George Wiggins Estate and the Chairman, Selectmen of Sunapee.

Dated: July 29, 1992

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Valerie B. Lanigan, Clerk

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