

Chamberlain Sunapee Estate

v.

Town of Sunapee

Docket Nos.: 8009-89 and 10555-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$481,300 (land, \$446,300; buildings, \$35,000) on a 1.3-acre lot with a camp and identified as Map 29, Lot 3 (the Property). The Taxpayer owns another property Map 29, Lot 4, that was settled, but nonetheless considered by the board. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). The Town recommended an adjustment to \$456,600. 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

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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 assessment was excessive because:

- (1) the highest and best use would be as a vacant lot, which would require razing the existing cottage; and
- (2) an appraisal estimated a value of \$320,000, assuming highest and best use as vacant land.

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 revised assessment was proper because:

- (1) two of the Town's sales (Burton & Rice) support the assessments; and
- (2) the Taxpayer's expert did not sufficiently adjust two of her sales for their much inferior location on Job's Creek.

Based on the evidence, we find the correct assessment should be \$418,600 (land \$383,600 and building \$35,000). This assessment is ordered because:

- (1) The condition factor is reduced to 4 to further reflect the path only access to the cottage and the shallow frontage.
- (2) The Taxpayer's expert under-valued the lot as vacant given its size, location and

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service by sewer.

(3)While it is debatable whether the highest and best use is as improved or as vacant, the board finds the cost to construct a drive and then to

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demolish and dispose of the existing cottage is of a similar magnitude as the value that would be added to the lot as vacant. Therefore, valuing the Property as currently improved is reasonable.

"In mass appraisal, the current highest and best use is considered to be the current use, that is, buildings will not be immediately demolished or replaced." Property Appraisal and Assessment Administration, The International Association of Assessing Officials, Joseph K. Eckert, Ph.D., General Editor 1990, pgs. 102 and 103.

(4) No further adjustment is necessary for access across Lot 3 to Lot 4 and to the Servadio Property as the Taxpayer owns both Lots 3 and 4 (See RSA 75:9) and the Servadio Property does not have an easement across Lot 3.

If the taxes have been paid, the amount paid on the value in excess of \$418,600 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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., 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.

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Dated: July 27, 1992

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Valerie B. Lanigan, Clerk

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ORDER RE REQUEST FOR CLARIFICATION

On September 14, 1992, the board of tax and land appeals (board) received a request for clarification from the Town. The Town stated it could not arrive at the board's ordered land value by reducing the condition factor to 4.00.

Clarification

The Town should do their math and not rely upon the value apparently either incorrectly calculated or printed by the computer program.

The Taxpayer's "land line" of the assessment card prior to the board's order

(Exhibit TN-H) read:

1 acre x \$31,900 x 3.00 x 4.25 = \$420,800
(# of units) (unit price) (factor) (condition)

The math is incorrect; the answer should be \$406,700.

Consequently, the board's ordered reduction of the condition factor to 4.00 should calculate as follows:

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$$\begin{array}{rcccccc} 1 \text{ acre} & \times & \$31,900 & \times & 3.00 & \times & 4.00 & = & \$382,800 \\ (\# \text{ of units}) & & (\text{unit price}) & & (\text{factor}) & & (\text{condition}) & & \end{array}$$

$$\begin{array}{rcc} .3 \text{ acre supplemental land (previous value)} & = & \underline{\quad 800 \quad} \\ & & \$383,600 \end{array}$$

The board does note that apparently an earlier unit price of \$33,000 was used in the calculation but that a different computer print-out showed the \$31,900 unit price. However, in making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value.

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Therefore, the board's original order stands and the board would hope the programming error that caused the misprinting and miscalculation can be corrected.
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Franklin, Member

Paul B.

Ignatius MacLellan, Esq., Member

I certify that copies of the within order have been sent, this date, postage

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prepaid, to George R. Moore, Esq., Counsel for the Taxpayer, and to the Chairman, Board of Selectmen, Town of Sunapee.

Melanie J. Ekstrom, Deputy Clerk

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Melanie J. Ekstrom, Deputy Clerk

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