

**Bernard and Mariette Lemieux**

**v.**

**Town of Jefferson**

**Docket No.: 13496-92PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessments of:

\$42,400 on Lot 3A, a vacant, 1.31-acre lot;

\$36,400 on Lot 3B, a vacant, 1.31-acre lot; and

\$199,200 (land \$87,700; buildings \$111,500) on Lot 3J, a 7.57-acre lot with a house (the Properties).

For the reasons stated below, the appeal for abatements is granted.

For hearing purposes, this appeal was consolidated with four other appeals (Aucello v. Town of Jefferson, Docket No.: 13493-92PT; Corvinus v. Town of Jefferson, Docket No.: 13492-92PT; Palumbo v. Town of Jefferson, Docket No.: 13495-92PT; and Aucello v. Town of Jefferson, Docket No.: 13494-92PT) in the Sunset Paradise subdivision and the board takes official notice of all evidence and testimony presented in those appeals.

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 203.09(a);

Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden and proved disproportionality.

The Taxpayers argued the assessment on Lot 3A was excessive because:

- (1) the land portion of the assessments cause the total assessment to be disproportional;
- (2) the land condition factor for views inflates the land value;
- (3) the view factor should be eliminated because there was no market data to support the land value and it was inconsistently applied throughout Town;
- (4) undeveloped lots in the same subdivision were available for sale in 1995 for \$20,000 to \$22,000 and lots 3A and 3B were purchased by the Lemieuxs for \$13,500 each in 1992; and
- (5) the Town's comparable sales occurred in 1990, 1991 and 1993, not 1992.

The Town argued the assessments were proper because:

- (1) the view factor considerations are determined based on the view from the house site or potential house site;
- (2) the Town did not consider valid the sales of Lots 3A & 3B in 1992 for \$13,500 because: a) they sold for so much less than any other lots in the Town at the time; and b) the Lemieuxs were the original developers of Sunset Paradise;
- (3) Lot 3M sold in 1993 for \$26,000; Lot 3M is encumbered with a power-line easement and a right-of-way owned by Whitefield Aquaduct Company; and
- (4) the Corvinus' Property transferred in 1990 for \$170,000 and, if adjusted for the market change based on the change in the equalization ratios, the sale supports the

1992 assessment; further, the uncontested 1993 assessment, adjusted by the ratio, supports the assessment.

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### **Board's Rulings**

The board's decision will address two general issues raised in this case: 1) should a view factor be applied in assessing the Property?; and 2) what is the appropriate market value estimate for the Property to then be equalized by the 132% level of assessment for Jefferson?

#### VIEW FACTOR

In arriving at a proper assessment, the Town must look at all relevant market factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The board finds that views can be a factor that affect market value. In this appeal, the Taxpayers argued that because there are views throughout the Town of Jefferson, no positive view factor should be applied to the land base rate. The board finds that, while a view adjustment by appraisers inherently involves some subjectivity, appraisers must adjust for views if the market shows such a distinction. This can be done by either varying the land base rates or by applying a factor to a standard rate as the Town did here. The methodology is immaterial, as long as the resulting assessment reasonably reflects the market's recognition of the view as a value factor.

In this case, the board rejects the Taxpayers' argument that the assessments would be more proportional if the view factor was totally eliminated. The board finds such elimination would increase disproportionality rather than decrease it. While views may be more prevalent in Jefferson than in other communities, the degree,

orientation and type of view are factors to be considered in the assessment.

Whether the factor results in a proper assessment relative to market value is addressed in the next section.

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The Town did concede that errors were made in assigning some view factors. However, the possible underassessment of other properties does not prove the overassessment of the Taxpayers' Properties. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987).

### **MARKET VALUE -- LOT 3J**

The Taxpayers focused their arguments on the land portion of the assessment and attempted to show that the view factor was inappropriate and inconsistently applied. The board finds the Taxpayers' arguments for the developed lot fails. 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. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The Taxpayers failed to submit any evidence to show disproportionality of the total assessment (land and building).

The evidence in this case supports the Town's assessment. First, the Taxpayers presented no market evidence for the Property (Lot 3J) as a whole. Second, the Town's analysis of the Corvinus' and Cassity sales and analysis of the 1993 updated assessed value (See Town's exhibit) support the total assessment.

In short, if the board were to grant an abatement strictly on the Town's land

methodology, the total assessment would be lower and would not be proportional to the market evidence the Town submitted of improved property sales.

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### **MARKET VALUE -- UNIMPROVED LOTS 3A & 3B**

"It has been said that '[t]he search for 'fair market value' is a snipe hunt carried on at midnight on a moonless landscape.'" Fusegni v. Portsmouth Housing Authority, 114 N.. 207, 211 (1974). With the variable market data presented in this appeal, arriving at a definitive market value for the unimproved lot is indeed akin to a snipe hunt.

The following market evidence was submitted by the parties: 1) in 1992 Lots 3A and 3B were purchased by the Lemieuxs for \$13,500 each and then listed for \$23,000 and \$25,000; 2) Lot 3M sold in 1993 for \$26,000; 3) two undeveloped lots were available for sale in 1995 for \$20,000 to \$22,000; and 4) several Crystal View lots sold in 1991 and 1992 for approximately \$8,000 to \$12,000.

1) The board finds the sales of Lots 3A and 3B for \$13,500 are not reflective of market value. Mrs. Lemieux testified that she felt their purchase was a good buy, and they immediately listed the properties at \$23,000 and \$25,000. 2) The board finds the sale of Lot 3M to be the most conclusive evidence of market value of an undeveloped lot at Sunset Paradise. However, the board, after reviewing the deed and the photographs of Lot 3M, concludes the power-line easement and the water line right-of-way do not negatively affect the lot to the extent (20%) adjusted for by the Town. 3) The listings of several other lots for \$20,000 to \$22,000 provide some indication, but not conclusive evidence, of market value. 4) The board places little

weight on the sales in Crystal View because too many unanswered questions about the arm's-length nature of those sales were raised during the hearing. Further, the board notes the department of revenue administration, in calculating the Page 6  
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Town's 1992 equalization ratio, did not use most of the sales in Crystal View as they would have over represented one subdivision in the ratio study.

After reviewing the various market data, the board concludes the 1992 market value of the unimproved lots in Sunset Paradise ranged from \$20,000 to \$26,000 or an assessment range, by applying the 1992 ratio of 132%, of \$26,400 to \$34,300.

Based on the photographs submitted and the Town's description of the Property, the board concludes the lots have a reasonable view and topography but due to their location have less privacy than other lots and the proper assessment should be \$30,350 each.

If the taxes have been paid, the amount paid on the value in excess of \$259,900 (Lot 3J: \$199,200; Lot 3A: \$30,350; Lot 3B: \$30,350) shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party

establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the

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board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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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 Bernard and Mariette Lemieux, Taxpayers; and Chairman, Selectmen of Jefferson.

Dated: November 6, 1995

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Valerie B. Lanigan, Clerk