

**Barbara and Guy Alexander, Jr.,
Trustees of the Alexander Living Trust**

v.

Town of Sunapee

Docket No.: 14712-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of \$603,500 on Lot 15, a 1.95-acre lot with a house (the Property). The Taxpayers also own Lot 15-A, but the parties agreed that assessment was correct. For the reasons stated below, the appeal for abatements is granted to the Town's recommended \$530,000 assessment.

The Taxpayers have the burden of showing the assessment was 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).

The Taxpayers argued the assessment on Lot 15 was excessive because:

- (1) the Town had increased the assessment during the update and had adjusted the condition factor that the board previously had ordered;
- (2) the Town erred in calculating the condition factor; and
- (3) a sales analysis, using the Town's comparables, showed overassessment.

The Taxpayers submitted a report to the board.

The Town recommended an adjustment due to the Property's location next to the condominium's common beach, mooring and docks. The adjusted assessment would be \$530,000 (\$419,400 land; \$110,600 building).

The Town argued the adjusted assessment on Lot 15 was proper because: (1) the condition factor was calculated using the methodology used throughout the Town (See explanation below.); and (2) it was supported by an analysis of three sales.

The Town explained that the condition-factor adjustments were made for conditions that were different from the norm. These adjustments were not made to all lots even if a particular lot had some of the condition but not in any unusual way. For example, a lot may have had shallow water but would not receive an adjustment if the water's shallowness was within usual limits. But if the shallow water adversely affected normal use, e.g., too shallow for a boat or to swim, an adjustment would have been made.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not show that the Town's recommended \$530,000 assessment was excessive for the following reasons.

1) The Taxpayers have the burden to show overassessment. In this case, the Taxpayers attempted to argue with the Town's methodology in determining the condition factor. The Taxpayers should have presented a market analysis, and probably an appraisal, to show what the Property was worth. This value would then have been compared to the Property's assessment, which was approximately its equalized value.

2) The Town reviewed three recent sales and analyzed those sales. This analysis indicated that the Property was properly assessed. We note most importantly, the Town's comparable #2, which was located next to the Property. While comparable #2 did not directly abut the condominium property, it was located one lot over and was in the same small cove as the condominium property. That sale indicated the high value of waterfront properties even in this particular location.

3) The Town testified that it used the same methodology in setting the condition factor on the Property as it did for other lake properties. This demonstrates a consistency in setting the condition factor, and this consistency would be lost if the board simply allowed individual taxpayers to come in and give their subjective view of what the condition factor should be. The Town explained the condition factor for the Property, and it was reasonably arrived at.

If the taxes have been paid, the amount paid on the value in excess of \$672,700 (\$530,000 Lot 15; \$142,700 Lot 15A) 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 and 1995. 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;

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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 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

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Barbara and Guy Alexander, Jr., Taxpayers; and Chairman, Selectmen of Sunapee.

Dated: May 22, 1996

Valerie B. Lanigan, Clerk

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