

**Douglas W. Koeppen**

v.

**Town of Sunapee**

**Docket No.: 17803-98PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$353,300 (land \$272,400; buildings \$80,900) on a 1.7-acre lot with a single-family home (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 a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Town assigned site values on Bay Point Road on the basis of only one sale, when in fact there were three sales on Bay Point Road that year;
- (2) the .8-site adjustment is low, given the lot's topography and steep access to the lake;
- (3) the assessment is disproportionate to several abutting and neighboring properties;

- (4) the lot is on a private road accessed only through the Town of Newbury; and
- (5) a January 1999 realtor's opinion of value of the Property was \$300,000.

The Town argued the assessment was proper because:

- (1) there was only one valid sale on Bay Point Road which indicated a lot value of \$391,400; the Town chose an indicated site value of \$300,000 to be conservative;
- (2) the two Bay Point Road sales used by the Taxpayer were not considered in the Town's analysis because one was of multiple parcels and the other was a family sale; and
- (3) the Town has applied a 20% discount from the \$300,000-base rate for the Property's long, steep access.

Subsequent to the hearing, the board on its own viewed the Property and several of the comparables submitted by the parties.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$308,300 (land \$227,400; building \$80,900). This assessment is calculated by applying an additional 15% adjustment for the building site's topography, resulting in a total revised land assessment of \$227,400.

The board finds the Property's steep elevation, rocky terrain and water frontage are unique enough to warrant such adjustment, based on a review of the comparables and its view of the Property and other lots in the neighborhood. The board agrees with the Taxpayer that the 90-foot elevation difference between the dwelling and the waterfront accessed by 95+ steps could be a significant factor the market would consider. The steep terrain would significantly narrow the

market participants that would be interested in the Property (i.e., families with children and older individuals would be unlikely to be interested due to the difficult water access). Further, while a property's elevation above a lake often affords a good view of the lake, the board finds the elevation, in this case, did not afford any significantly better view than other lots to offset the access and topography difficulties.

On the view, the board reviewed the one sale utilized by the Town during the reassessment, and the two sales subsequent to the reassessment submitted by the Taxpayer. While it is difficult to draw direct value conclusions from any of these sales, the board finds the Property's revised assessment is more proportional to these sales, in light its of physical features than the Town's assessment.

If the taxes have been paid, the amount paid on the value in excess of \$308,300 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 1999. 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 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, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Douglas W. Koeppen, Taxpayer; and Chairman, Board of Selectmen of Sunapee.

Date: May 23, 2000

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Lynn M. Wheeler, Clerk

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