

**Ingeborg Schacht**

**v.**

**Town of Sunapee**

**Docket No.: 17838-98PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$192,400 (land \$131,000; buildings \$61,400) on a 2-acre lot with a single-family home located in a development known as "Oakledge" (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 assessed value is higher than the Property's fair market value;
  
- (2) the Town's \$130,000 lot value for each lot at Oakledge is flawed resulting in lots with scenic

views being underassessed and wooded lots without views (as in the Property) being overassessed;

- (3) the sales in the development represent an average sale price of \$159,750; and
- (4) the April 1998 market value of the Property was \$150,000.

The Town argued the assessment was proper because:

- (1) there was only one timely, qualified sale in Oakledge which indicated a land residual value of \$162,800;
- (2) the Town assigned a conservative site value of \$130,000 for each lot;
- (3) research on several of the Taxpayer's low land residual sales would show they are not arm's-length sales; and
- (4) the Taxpayer grouped many vacant land sales with land residuals which must be separately analyzed using only qualified sales or the results are not valid.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$177,400 (land \$116,000; building \$61,400).

As noticed in the board's order of June 28, 2000, the board considered all the market data submitted in this appeal and that of Whitney & Johnson, Inc v. Town of Sunapee, Docket No.: 17889-98PT during its deliberations. Following the hearing, the board viewed the development of Oakledge in general, and specifically viewed the exterior of the appealed Property and comparables submitted.

Based on the evidence submitted and the board's view of the development, the board

concludes that the base land values for Oakledge arrived at by the department of revenue administration (DRA) during the Town's 1998 reassessment are high for the 1998 tax year and should be revised to an undeveloped-building site value of \$70,000 before adjustments and an improved-building site value before adjustments of \$115,000.

The DRA determined, by the land residual technique, an improved site value of \$130,000 based on one sale, Lot 0002-0033-1704. The land residual technique is a well-recognized method of estimating the contributory value of land from sales of improved property. Appraisal Institute, The Appraisal of Real Estate 307 (10<sup>th</sup> ed. 1992). The technique simply subtracts an estimated depreciated replacement cost of the improvements from the sale price of an improved property to provide an indicated contributory value for the land. In this appeal, the board finds the DRA's sole reliance on a value indication by the land residual technique resulted in a land-value conclusion that was high in 1998 for the following reasons.

First, the DRA analyzed only one improved-property sale, Lot 002-0033-1704 ("Herbert" sale). The DRA testified it concluded other improved sales were not arm's-length for various reasons, including that some of the values appeared to be significantly depressed and some of the properties had been listed on the market for a lengthy period of time. Reliance on a land residual analysis of one sale for the base land values is questionable given the general variability of the market (discussed further in this decision) and the fact the Herbert sale was the highest price of any sales in Oakledge during the reassessment period.<sup>1</sup> The board finds it is difficult, in this

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<sup>1</sup> The board reviewed the Town's replacement cost estimate of the improvements of the Herbert sale by checking the calculations with the Marshall and Swift Residential Handbook. While the Town's estimate appears reasonable based on the board's exterior view and the property-record card listing, it is quite possible the improvement contributory value could be more

case, to extract, by the land residual technique, a consistent and reliable estimate of contributory land value because of the variability of the sales that occurred in and about the time of the reassessment. To highlight this variability and the lack of consistent land residual indications, the board has listed those improved-property sales that were submitted on the spread sheet enclosed in Appendix A.

Based on all the testimony and evidence, the board concludes the variability of these sales in Oakledge during this time is a result of several factors including: 1) some properties were listed on the market for a lengthy period and the owners' were desirous to liquidate properties in order to move on with other real estate opportunities; and 2) Oakledge properties are comprised largely of seasonal/recreational properties which are usually owned by individuals with more varied ownership motivations than the residential market which is largely comprised of persons looking for their primary residence. These varying motivations are reflected by some properties selling for significantly less than the replacement cost of the buildings plus a reasonable lot value, and in other cases, selling for significantly more than a lot value plus construction cost. In short, because the participants in this market come from differing backgrounds, locations and motivations, they may not be fully knowledgeable of the market and, therefore, pay prices that are inconsistent compared to participants in a more normal residential market.

Second, sales of unimproved lots (albeit several years old) provide a good unimproved

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than estimated, thus reducing the indicated land residual value.

lot benchmark from which to develop an improved lot value. Three lots (Lots 1001, 1507 and 1703) sold in 1995 and 1996 for \$60,000 to \$65,000 per lot. No sales of unimproved lots occurred in 1997 or 1998 to provide more timely indications of market value as of April 1, 1998. However, a number of sales did occur subsequent to the reassessment in the latter part of 1999 which generally indicated lots had increased in value at that time to \$85,000 to \$90,000. During its deliberations, the board reviewed and considered both the DRA's time adjustments to these sales and the Taxpayer's testimony in the Whitney & Johnson appeal. The board finds some truth in both. First, the board does not agree entirely with the Taxpayer's testimony in Whitney & Johnson that the market made no change from 1995 and 1996 to 1998 and then jumped in one-year period from \$65,000 to \$85,000-\$90,000. However, neither does the board agree with the DRA that the time adjustments are necessarily of a straight-line nature. The board received testimony in the Whitney & Johnson appeal, as it has in other seasonal, waterfront-related appeals, that the market increased significantly in 1998 and has grown at significant annual rates subsequent to that point in time, whereas before then, the market appreciation was more conservative. However, the board concludes there was some market appreciation from 1995 and 1996 to April 1998. The board also considered the good quality of the infrastructure (roads, waterfront development area, etc.) of Oakledge in determining that some increase in value from

1995 and 1996 to 1998 was appropriate. Consequently, weighing all the evidence submitted, the

board concludes the April 1, 1998 unimproved lot value of \$70,000 is reasonable.<sup>2</sup>

The board finds DRA's existing differential of \$45,000 (\$130,000 improved-lot value minus \$85,000 unimproved-lot value) is a reasonable estimate attributable to the site improvements normally associated with improved lots at Oakledge. Such site development includes the installation of a well, septic system, driveway and associated site work necessary for building. Most of the topography in Oakledge is fairly steep and rough comprised of shallow soils and large boulders necessitating more expensive site work than more conventional lots. However, the board did note on the view that, as an offset, most of the improved sites have minimal landscaping and a relatively small cleared area outside that necessary for a driveway, well, septic and house construction. Consequently, the board finds an improved lot value of \$115,000 is reasonable.

Applying the reduced improved lot value of \$115,000 to the Taxpayer's assessment results in the revised proper assessment of \$177,400.

If the taxes have been paid, the amount paid on the value in excess of \$177,400 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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<sup>2</sup> It appears from the 1999 sales of unimproved lots that land values increased significantly subsequent to the 1998 tax year. The Town should, as required by RSA 75:8 and allowed by RSA 76:17-c, review the assessments throughout town, and specifically in Oakledge, to determine whether the board's finding for 1998 should be carried forward to subsequent years or whether good-faith adjustments should be made.

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 Helmut Schmidt, Representative for Ingeborg Schacht, Taxpayer; and Chairman, Board of Selectmen of Sunapee.

Date: September 5, 2000

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Lynn M. Wheeler, Clerk