

**Nancy H. MacDonald**

**v.**

**Town of Sunapee**

**Docket No.: 17855-98PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$240,900 (land \$131,100; buildings \$109,800) on a 2.1-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 Property was purchased in October 1998 for \$195,000 which included approximately \$22,000 in personal property;
- (2) the Property is on a wooded lot, has no view and was substantially damaged from the 1997

ice storm;

(3) the Oakledge sales data indicates the purchase price of the Property may in fact have been high; and

(4) the proper assessment should be \$173,000.

The Town argued the assessment was proper because:

(1) although the Property did sell for \$195,000 in October 1998, because it sold with furnishings, it does not meet the criteria of a fair market sale;

(2) during the review process, the house was depreciated 15% for its unusual shape and layout;

(3) there was only one timely, qualified sale in Oakledge which indicated a land residual value of \$162,800;

(4) the Town assigned a conservative site value of \$130,000 for each lot; and

(5) research on several of the Taxpayer's low land residual sales would show they are not arm's-length sales.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$198,500 (land \$116,100; buildings \$82,400). This is based on revising the base land price of the building site to \$115,000 and applying an additional 10% functional obsolescence to the building due to its unique design and lack of the same square footage on the first and second floors.

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-to-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 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

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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 than estimated, thus reducing the indicated land residual value.

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 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.

The board reviewed the list of personal property the Taxpayer stated was included in the sale price and finds that, while it includes an extensive number of items, it is questionable how much value the personal property added to the final sale price of the house. While it is possible

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<sup>2</sup> It appears certain 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.

it added some value, the board does not find the Taxpayer's estimate of \$22,000 to be reasonable. Such value reflects more value in use as opposed to value in exchange.

Further raising a question as to the actual transferrable value of the personal property is the fact that the grantor and grantee did not, at the time of the sale, allocate value between personal property and real property, the basis of calculating the real estate transfer tax. While this alone is not conclusive of any value attributable to the personal property, it is some indication that the parties did not consider it of significant magnitude to warrant such an allocation at the time of the transfer.

Also the board finds that the sale price is likely to have been impacted by the seller wanting to liquidate her equity in the Property to be able to purchase another property as testified to by the Town. Without being able to definitively quantify either the personal property or the effect of the grantor wishing to liquidate, the board concludes both factors likely offset each other and the resulting sale price is a reasonable estimate of the Property's real estate value as of the time of the sale in September 1998.

Based on the board's observations during the view, the board finds a 10% adjustment is warranted for the building's functional obsolescence recognizing its unusual triangular shape and the second floor's smaller square footage due the sloping roof line.

Considering all these factors, the resulting assessment of \$198,500 is a reasonable estimate of the real estate value as of April 1, 1998.

If the taxes have been paid, the amount paid on the value in excess of \$198,500 shall be

refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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 Nancy H. MacDonald, Taxpayer; and Chairman, Board of Selectmen of Sunapee.

Date: September 5, 2000

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Lynn M. Wheeler, Clerk

**Nancy H. MacDonald**

**v.**

**Town of Sunapee**

**Docket No.: 17855-98PT**

**ORDER**

This order responds to the “Taxpayer’s” October 2, 2000 rehearing motion (resubmitted October 30, 2000). For the reasons that follow, the motion is denied.

All issues raised in the motion were argued at hearing and adequately addressed in the board’s September 5, 2000 decision with the exception of the house inventory estimate performed by a Ms. Priscilla Drake (Drake Inventory). The Drake Inventory does not form a basis for a rehearing as it is evidence that could have been discovered in time to be presented at the original hearing.

**201.37 (f) Additional Facts or New Arguments.** Parties shall submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available to the moving Party but not presented at the original hearing or to consider new arguments that could have been raised at the hearing. Except by Leave of the Board, Parties shall not submit new evidence with rehearing motions. Leave shall only be granted when the offering Party has shown the evidence was newly discovered and could not have been discovered with due diligence in time for

the hearing and when the new evidence will assist the Board. (Emphasis added.)

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 Nancy H. MacDonald, Taxpayer; and Chairman, Board of Selectmen of Sunapee.

Date: November 9, 2000

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Lynn M. Wheeler, Clerk