

**Wilma E. and Stillman L. Vonderhorst**

**v.**

**Town of Sanbornton**

**Docket No.: 20562-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$118,000 on Map 24/037/003, a seasonal condominium (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the property next door, Sunrise #8, contains 486 square feet, has a gas heater, rests on new piers and has been redone but has a lower assessment than the Property which contains 384 square feet;

(2) the Property looks directly onto the common beach area which the Taxpayers do not control;

and

(3) the Property is near the bridge and large sandbar in the lake which is always crowded.

The Town argued the assessment should be revised and the revised assessment was proper because:

(1) based on the sale of an adjacent property, Sunrise #10, the Property's market value was \$105,000 on April 1, 2003; and

(2) although the Town did not perform the calculation, the market value estimate should be multiplied by the Town's equalization ratio ( 91.5%) for 2003, to determine the proper assessment.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$96,100.

Assesments must be based on market value. See RSA 75:1. The Board finds the best evidence of the Property's market value is contained in the Town's submission (Municipality Exhibit A). In its exhibit, the Town estimated the Property's market value by comparing it to the adjacent property, Sunrise #10, which sold on June 7, 2002 for \$125,000. The Property and the comparable sale are very similar in that they both have the same floor area and layout with the sole variation, according to the testimony of the parties, between the two condominiums being their "condition." The Taxpayers testified the Property was resting on cinder blocks, out of plumb, sagging and needed work. The sale property, Sunrise #10, however, had been redone and was resting on new piers. On a sales comparison grid used to estimate the Property's market value, the Town made an adjustment to account for the difference in condition between the two

condominiums. After making the adjustment, the Town found the Property's April 1, 2003 market value was \$105,000.

The board has heard testimony in numerous cases regarding various rates of appreciation for waterfront properties state-wide. Although different municipalities have used varying rates, the board is unaware of a town that has not used some rate of appreciation for similarly situated properties during this timeframe. In the Town's sales analysis, the only adjustment made was for the previously discussed "condition" factor. The board finds the Town's market value estimate is probably conservative given the lack of an adjustment for any appreciation that may have occurred during the time elapsed between the comparable's sale date (June 7, 2002) and the April 1, 2003 assessment date. Because neither party presented any testimony or evidence of an appropriate appreciation rate, the board has not adjusted the Town's market value estimate. The Board does, however, find that in order to determine the proper assessment, the Town's market value estimate must be multiplied by the general level of assessment in the municipality. The level of assessment in the town in 2003 was 91.5%. Therefore, to determine the proper assessment, the Board has multiplied the market value determination of \$105,000, by the Town's 91.5% general level of assessment to arrive at the proper assessed value of \$96,100 (rounded).

The Taxpayers testified there were several factors that negatively impacted the value of the Property including; 1) the common area beach for the condominium association located directly between the Taxpayer's condominium and the waterfront, 2) the large sand bar in the lake which is a gathering place for many boaters and swimmers located just offshore from the front of the Property, and 3) the close proximity of the highway bridge crossing the lake channel. These factors may indeed affect the value of the Property, however, the Taxpayers presented no analysis or market data estimating the amount or degree of impact these influences caused.

Presumably, however, some of these factors also impacted the market value of Sunrise #10, the adjoining property that sold and was utilized in the Town's sales analysis and thus are inherently reflected in the market value estimate of \$105,000.

Further, the Taxpayers stated (in Taxpayer Exhibit No. 2) the Property had experienced a substantial (64%) increase in its assessment during the time period between when it was purchased in 1996 and the 2003 tax year under appeal. The Taxpayers also argued that some other properties had not increased at the same rate. The Board finds such evidence does not conclusively prove the Property is disproportionately assessed. Increases from past assessments are not evidence a taxpayer's property is disproportionately assessed compared to that of other properties in general, in the taxing district in a given year. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a Town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary both in absolute numbers and in percentages, from property to property. Further any underassessment of other properties, however, does not prove the overassessment of the Property. See Appeal of Cannata 129 NH 399, 401 (1987).

The Taxpayers testified the abutting property, known as Sunrise #8, should not have a lower assessed value than the Property. In response, the Town stated Sunrise #8 had a lower assessed value due to its distance from the beach and its view. The Town testified it accounted for these differences by adjusting the unit location factor in the "condo data" section on the assessment-record card and all the Sunrise units were adjusted similarly depending on their location and view. Even if the Town's methodology doesn't accurately arrive at the proper assessed value for Sunrise #8, as noted above, any underassessment of other properties does not

carry the Taxpayers' burden of proving their assessed value is disproportionate to market value.

RSA 75:1.

If the taxes have been paid, the amount paid on the value in excess of \$96,100 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 or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years.

RSA 76:17-c, I and II.

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(f). 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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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Wilma E. and Stillman L. Vonderhorst, 2407 N. Pond Road, Brattleboro, VT 05301, Taxpayers; and Chairman, Board of Selectmen, Town of Sanbornton, PO Box 124, Sanbornton, NH 03269.

Date: June 16, 2006

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Anne M. Stelmach, Clerk