

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

**v.**

**Town of Sanbornton**

**Docket No.: 22026-05PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of \$199,000 (building only) on Map 24/Lot 037/Sublot 003, a condominium (the “Property”). For the reasons stated below, the appeal for abatement is granted to the Town’s recommended revised assessment of \$167,800.

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) units 8 and 10, which abut the Property (unit 9) on either side, have been completely renovated although their assessments do not accurately reflect the significant difference in their condition compared to the Property;
- (2) the Property has structural problems;
- (3) the close proximity of the picnic area and abutting dwellings hinders the Taxpayers enjoyment of the Property;
- (4) the people using the “sand bar” in the lake in front of the beach area are a nuisance that affects the value of the Property;
- (5) the seasonal nature of the units in the “Sunrise” development, where the Property is located, compared to the year-round use of the neighboring units in the “Lakeside” development should be reflected in the assessments of the two developments; and
- (6) the assessment should be abated to \$128,300.

The Town argued the assessment should be revised to \$167,800 and the revised assessment was proper because:

- (1) the Property sold for \$175,000 in June 2007 in an arm’s-length transaction;
- (2) real estate selling prices were stable during the 2005-2007 time period making the Property’s selling price a good indication of its market value in 2005; and
- (3) the Property’s proposed revised assessment of \$167,800 is based on the selling price and the general level of assessment in the Town in 2005 ( $\$175,000 \times 0.959 = \$167,800$ ).

### **Board’s Rulings**

Based on the evidence and testimony, the board finds the Taxpayers’ assessment should be abated to the Town’s revised \$167,800 value.

The Property is identified as Sunrise Condominium Unit 9. The Taxpayers submitted a photograph (Taxpayer Exhibit No. 1) which showed the location of the Property relative to the waterfront, the abutting properties at units 8 and 10 and the common picnic area between the Property and the waterfront area. The Taxpayers testified there were several factors that negatively impacted the Property's market value which the Town did not properly account for.

First, the communal picnic area of the condominium association is right outside the windows of the Property and the continual use of the picnic area late into the evening by the association's residents impacts the Property's value. Neither unit 8 nor 10 is similarly impacted as unit 8 is further from the water and unit 10 faces directly onto the beach area. Second, the close proximity of units 8 and 10 as well as the Property being "sandwiched" between the water and Bay Road further reduces the Taxpayers' privacy and enjoyment of their unit. Third, the presence of the "sand bar," a popular gathering place for boaters and swimmers located in the lake a short distance off shore from the association's waterfrontage, produces a significant amount of noise that also negatively impacts the Property.

In addition to how the Property is sited within the association complex, the Taxpayers argued units 8 and 10, which have been completely remodeled and are on concrete piers, are inconsistently assessed compared to the Property which rests on concrete blocks and is in a state of disrepair with sagging floors and a significant amount of deferred maintenance. As an example of the inconsistent assessment, the Taxpayers testified unit 8 which abuts the Property and is two feet wider and two feet longer yet is inexplicably assessed significantly less than the Property. The Town responded that unit 8's assessment was less than the Property's due to unit 8 being located farther from the waterfront.

The Taxpayers further testified their unit and the other units in the Sunrise Condominium Association should be assessed lower than the units in the adjoining Lakeside Condominium Association. The Sunrise units can only be used six months of the year per a town restriction while the Lakeside units are able to be used on a year-round basis with many of them being winterized and rented. With their appeal form, the Taxpayers submitted a letter from the Town's contracted assessor, Vision Appraisal Technologies, Inc., which identified two sales (unit 2 in Sunrise and unit 3 in Lakeside) that indicated the unit in Sunrise sold for more on a per square foot basis than the unit in Lakeside. The Town testified there was no market data to support assessing the Lakeside units higher than the Sunrise units even with the utilization restriction.

Assessments must be based on market value. See RSA 75:1. The Town stated the Taxpayers did not provide any market data to support an adjustment to the assessment for the issues they raised or their assertion the assessment should be abated to \$128,300. The board concurs.

At the hearing, the Town proposed revising the Property's assessment to \$167,800. The revised assessment was based on the fact the Taxpayers sold the Property in June 2007 for \$175,000 in an apparent arm's-length transaction. The Town testified real estate values appreciated in the Town during the 2002 to 2005 timeframe; however, real estate values were stable between the end of 2005 and the date the Property sold in 2007. Due to the stability in real estate values during the period between the assessment date and the date the Property sold, the board finds the Property's 2007 selling price is a reasonable estimate of the Property's market value in 2005. Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988) (Where it is demonstrated that a sale was an arm's-length transaction, the sale price is one of the "best indicators of that property's value.") The Town determined the Property's revised \$167,800

assessment by adjusting the selling price by the Town's 2005 level of assessment of 95.9% ( $\$175,000 \times 0.959 = \$167,800$ ). In support of this figure, the Town pointed to one of the Taxpayers comparable properties listed in their appeal document on the "summary comparative analysis" page. Comparable property # 4 in the analysis, located at 3 Bay Road and identified as unit 3 at the Lakeside Condominium complex, had a time adjusted selling price of \$173,000 which supports the proposed revised assessment for the Property.

The board finds the Property was not overassessed and the Taxpayers contention that some other nearby properties are incorrectly assessed is not a ground for an abatement. The underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id.

Therefore, the Taxpayers are entitled to an abatement to the Town's revised assessment of \$167,800.

If the taxes have been paid, the amount paid on the value in excess of \$167,800 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(g). 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: Stillman L. and Wilma E. Vonderhorst, 2407 N. Pond Road, Brattleboro, VT 05301, Taxpayers; Chairman, Board of Selectmen, Town of Sanbornton, PO Box 124, Sanbornton, NH 03269; and Vision Appraisal Technology, Attn: Mike Tarello, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: August 26, 2008

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Anne M. Stelmach, Clerk