

**Francis C. Dow**

**v.**

**Town of Newton**

**Docket No.: 17110-96PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$144,150 (land \$51,000; buildings \$93,150) on a 1.78-acre lot with a single-family home (the "Property"). On March 23, 1998, the Taxpayer requested the appeal for abatement be processed through an expedited procedure.<sup>1</sup> The municipality did not object and the board granted the request. The parties' positions were presented in writing and no oral hearing was held. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. RSA 76:16-a; TAX 203.09(a); see also Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish

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<sup>1</sup>The board's administrative rules PART TAX 207 governed the expedited procedure; however, TAX 207 was repealed in July, 1998. The Taxpayer's request to use the expedited procedure was granted due to his physical condition as outlined in his March 23, 1998 request, despite the fact that the board no longer utilized the procedure.

disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to carry this burden.

After the board received the parties' written submissions, it directed its review appraiser, Mr. Scott Bartlett, to review the file, inspect the Property and file a report. The review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation. The parties were given a copy of the review appraiser's report and an extended period of time to review it and file a response. Board members MacLellan and Ricard joined the review appraiser on the view and inspected the Property in detail, accompanied by the Property's owner on October 21, 1998. Subsequent to the view, board member MacLellan resigned his board position. Following new member Slovenski's appointment, he took a view of the Property on December 7, 1999, as well as the comparable sales, accompanied by member Ricard and the Property owner. Member Slovenski has reviewed the entire file, including the tapes of the March 4, 1999 telephone conference call, and joins member Ricard in the decision.

The Taxpayer argued the assessment was excessive because:

- (1) the site was purchased and the dwelling built during 1991 for a total cost of \$134,000. This figure should then have been time adjusted at a rate of -1% per month to April 1, 1992, resulting in a market value for the Property of \$121,100 on that date. Real estate values in the Town have increased by 7% to 9% from 1992 to 1996, making the Property's market value \$132,000 on April 1, 1996;
- (2) the large ditch and wet area crossing the Property behind the house prevent any direct access

to the back portion of the Property, diminishing its value; and

(3) the Town arbitrarily applied a \$350 per-front-foot value to Durgin Drive properties when other equally desirable neighborhoods were assessed at \$250 per-front foot. Durgin Drive is a more heavily traveled roadway than roads in other subdivisions. It is a thruway connecting with a commercially zoned area.

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

(1) comparable sales, when properly adjusted, indicate the Property is not overly or disproportionately assessed; and

(2) the Taxpayer did not present any evidence of the Property's April 1, 1996 market value.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer did not carry his burden of showing the assessment was disproportionately high or unlawful, causing the Taxpayer to carry a disproportionate tax burden.

In deciding this appeal, the board must be guided by the New Hampshire Constitution, the New Hampshire statutes and New Hampshire case law. The issue before the board is what was the Property's correct assessment on April 1, 1996. The board finds the guiding legal principles provided by the constitution, the statutes and case law answer this issue.

Under the New Hampshire Constitution, citizens are required to contribute their share of governmental costs. N.H. CONST., Pt. 1, Art. 12. Such contributions (i.e., taxes) must be

“proportional and reasonable [in] assessments, rates, and taxes \*\*\*.” N.H. CONST., Pt. 2,  
Art. 5.

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations assessments may not always be at market value. The assessment of a specific property must be proportional to the general level of assessment in the community.

In Appeal of Andrews, 136 N.H. 61, 64 (1992), the court held that the above-cited constitutional provisions require that all taxpayers in a town must be assessed at the same proportion of market value. Moreover, the court stated that to establish disproportionality, a taxpayer must show that its assessment was higher than the general level of assessment in the town. The court made it clear that proportionality was to be judged across the entire town rather than only by property type or neighborhood. Therefore, to comply with the constitutional obligation of proportional assessment, municipalities are obligated to ensure that properties are assessed at the same general level of assessment prevailing throughout the town.

Abatements are only granted when property is assessed disproportionately high because such an assessment results in a taxpayer paying more than its share of taxes. The courts have held that in measuring tax burden, which is really what an abatement case is about, market value and the general level of assessment in the community are the proper yardsticks to determine proportionality, not just a comparison to other assessments of similar properties.

The Appraisal Institute defines market value as follows.

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and acting in what they consider their best interests;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

This definition of market value is used by agencies that regulate federal financial institutions in the United States. The Appraisal Institute, The Appraisal of Real Estate 23 (11<sup>th</sup> ed. 1996).

In the instant case, neither party disputed the department of revenue administration's 1996 equalization ratio of 1.04 for the Town of Newton. The board has accepted this ratio as the ratio indicating the relationship between market values and the general level of assessment in the community. The ratio of 1.04 indicates that properties, in general, throughout the Town are assessed at 104% of their market value. For the Taxpayer to carry his burden of proof, it would be necessary to show that the Property's market value is something less than the total assessment

of \$144,150 divided by the equalization ratio of 1.04 ( $\$144,150 \div 1.04 = \$138,606$ ) or \$138,600 (rounded).

The Taxpayer's main argument is that there are assessing inconsistencies in the Town of Newton and the Property has been incorrectly assessed due to the assessor using an inconsistent methodology. In the Taxpayer's opinion, the assessor has not accurately considered all factors affecting the Property's value. The Taxpayer attempted to show the Property's assessment was calculated incorrectly through the use of assessments of other properties in the Town. For the board to find the Taxpayer's arguments persuasive, it would have to accept all the other assessments as accurate. The Taxpayer presented no evidence as to the accuracies of the assessments or the market values of these other properties. The board reminds the Taxpayer that the underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). The Taxpayer did not present an appraisal or other comparative analysis estimating an April 1, 1996 market value for the Property that was different than the equalized value.

The board finds the best evidence of market value for the Property is the board's review appraiser's report. As previously stated, the board considers the appraiser's report one piece of evidence which, in this case, the board finds compelling. The board took a view of the Property and the comparable sales and finds the description of the Property in Mr. Bartlett's report to be accurate and reliable. The calculations and the adjustments made by the appraiser in the cost and sales comparison approaches to value are reasonable and are generally market related and

derived. The board finds Mr. Bartlett's report took into account all factors that would influence market value including, but not limited to: the location of the Property; its size and road frontage; the condition of the lot, including the ditch and any other topographical or wetlands features; the age and condition of the improvements; and the individual characteristics of the dwelling, such as the number of bathrooms and bedrooms, basement and heating systems, and any attached porches, decks or garage. The board finds the review appraiser's report to be of sufficient depth to reflect an accurate estimate of market value for the Property. The report concluded that the market value of the Property on April 1, 1996, was \$141,000, which would equate to an assessment of \$146,600 (rounded). Market value can not be proved with mathematical certainty and must ultimately be a matter of informed judgment. The board notes that the Taxpayer's market value estimate of \$132,000 would result in an assessment of \$137,280 ( $\$132,000 \times 1.04$ ) on April 1, 1996. There is less than a 5% difference between the Town's current assessment and the Taxpayer's estimate. Similarly, the board review appraiser's market value estimate would result in an assessment within 2% of the current assessment.

Given this narrow range of values, the inexact nature of the assessment process in general, and the lack of market value evidence from the Taxpayer, the board finds the Property is not overassessed.

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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Douglas S. Ricard, Member

Steven H. Slovenski, Esq.

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Francis C. Dow, Taxpayer; Gary J. Roberge, representative for the Town; and Chairman, Selectmen of Newton.

Date: February 3, 2000

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Lynn M. Wheeler, Clerk

**Francis C. Dow**

**v.**

**Town of Newton**

**Docket No.: 17110-96PT**

**ORDER**

This order responds to the “Taxpayer’s” Motion for Reconsideration (Motion), which is denied. The Motion did not demonstrate the board erred in its decision and, thus, the Motion failed to show any good reasons to grant a rehearing. See RSA 541:3.

The board reviewed the record in this case and finds the February 3, 2000 decision is clear and addresses most of the rehearing arguments. In his Motion, the Taxpayer argues that market value is irrelevant and the only issue is disproportionality. As the board stated in its decision, in order to determine proportionality, the New Hampshire Supreme Court has held that market value and the general level of assessment must be considered. RSA 75:1 obligates the municipality to appraise all taxable property at its full and true value. Value, in this instance, has the same meaning as market value. Brock v. Farmington, 98 N.H. 275, 277 (1953). In

determining the general level of assessment in a municipality, one must look to the equalization ratio as determined by the department of revenue administration (DRA).

The board found the tax review appraiser's report to be the best evidence of market value and, when considered with the DRA's equalization ratio, indicates the "Property" is not disproportionately assessed. Contrary to the Taxpayer's assertions, the tax review appraiser used both the cost approach and the market/sales comparison approach in estimating the market value of the Property. The board finds these approaches to be the most relevant and appropriate approaches. The Property is not unique and may be assessed/appraised using standard appraisal methodology. Given the fact the Property is approximately 5 years old as of the effective date of the appeal (April 1, 1996), the usage of the two approaches employed by the tax review appraiser is appropriate and relevant. There was sufficient market data available for the tax review appraiser to form a supportable opinion of value.

The Taxpayer stated in his motion that he had been given erroneous information at the "Town" offices. He uses the corrected information to present a new argument. Parties shall not be granted a rehearing to consider evidence previously available to the parties that was discoverable with due diligence prior to the decision. TAX 201.37(f).

The board finds the decision addressed the relevant arguments in the Taxpayer's rehearing motion, and it is not necessary to re-examine them. The board finds the remaining issues not addressed are without merit and require no further discussion. See Vogel v. Vogel, 137 N.H. 321, 322 (1993).

Pursuant to RSA 541:6, any appeal of this order by the parties to the supreme court must be filed within thirty (30) days of the date on this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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Steven H. Slovenski, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing order has this date been mailed, postage prepaid, to Francis C. Dow, Taxpayer; Gary Roberge, Representative for the Town; and Chairman, Board of Selectmen of Newton.

Date: March 28, 2000

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Lynn M. Wheeler, Clerk

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