

**Paul and Judith Asselin**

**v.**

**Town of Deerfield**

**Docket No.: 19984-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$479,000 (land \$158,200; buildings \$320,800) on Map 204, Lot 43, a single-family residence on 1.20 acres (the “Property”). (The Taxpayers also own, but did not appeal, another property, Map 204, Lot 18, and the abated assessment on this other property (from \$54,900 to \$47,200) is not in dispute.) For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment on the Property 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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property is located on Pleasant Lake and properties across the same lake in another town (“Northwood”) have lower land assessments, as shown on Taxpayer Exhibit No. 2;
- (2) some differences can be noted (in Taxpayer Exhibit No. 1) in the “quality,” “condition” and depreciation factors applied to the building on the Property compared to several others in the Town (which one of the Taxpayers has personally visited) and these other properties have either a comparable or higher quality and condition and have newer construction than the Property; and
- (3) the Town should be more consistent in its assessment practices.

The Town argued the assessment was proper because:

- (1) the Taxpayers submitted no market value evidence and therefore made no showing of disproportionality;
- (2) the Town and Northwood had different assessing contractors (Avitar Associates and Brett S. Purvis & Associates, Inc., respectively), may have been reassessed in different years and had notably different levels of assessment for tax year 2003, as reflected in Municipality Exhibit No. A;
- (3) the Town was reassessed in 2000 and the Property was physically inspected in that year;
- (4) while there may be some differences in some wording on different assessment-record cards, the actual value adjustments made by the Town were consistent and proportional; and
- (5) the Taxpayers failed to meet their burden of proof.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed and the appeal is therefore denied.

The Taxpayers own a large, attractive and well-maintained home on Pleasant Lake, as shown by the photograph in Municipality Exhibit No. B. They did not present any evidence of the Property's market value. The board therefore has no basis for finding the Property was overassessed relative to its market value and the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003).

While the Taxpayers stated properties situated across Pleasant Lake in Northwood have lower land assessments, the Northwood assessment-record cards submitted in Taxpayer Exhibit No. 2 are not relevant evidence of disproportionality. While the towns used the same ("Avitar") software in their CAMA (mass appraisal) systems, they had different assessing contractors and their respective levels of assessment were quite different for the year under appeal: in tax year 2003, the median ratios were 63.5% in the Town and 50.2% in Northwood. See Municipality Exhibits No. A and No. C. Even for properties having the same market values, differing levels of assessment would result in different assessments in each town. It is also not implausible that (hypothetically) identical houses located in different neighborhoods (or, as in this case, located in different towns on the same lake) would have different values in the market because location is a key variable affecting values and assessments. See, e.g., Brand v. Town of Durham, BTLA Docket No. 20220-03PT (March 16, 2006) (a recent tax abatement appeal discussing effect of location on market value and the resulting assessment).

The board has also reviewed the comparable assessment-record cards in Taxpayer Exhibit No. 1 which show the building assessments on other houses. The board finds the explanations given by the Town, both in the testimony by its assessors and in Municipality Exhibit No. C, for the differences in assessments shown on these cards to be reasonable and supportable. For example, depreciation is not simply a function of physical age and building

assessments on a square foot basis can reflect size differences. The Town did acknowledge some subjective wording in the “Depreciation” section of some of the submitted cards (“excellent,” “good” and “average”) could be confusing, but this wording did not affect the correctness of the assessed values and the Town has taken steps to make the language more consistent.

The Taxpayers noted some other homes on Pleasant Lake in the Town are of higher quality: for example, they contend one building should have been rated an “A5” rather than an “A3” in comparison to the “A4” rating of the building on the Property because of its better quality of construction, but this contention does not entitle them to an abatement. As noted above, they did not present any evidence of market value, either of the Property or any other property to which they would like it to be compared. Moreover, the possible underassessment of another is not a ground for abatement on the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). In an abatement appeal, the relevant issue is whether the Property as a whole (land and building) has been overassessed. The board finds the Taxpayers failed to meet their burden of proof on this issue and the appeal is therefore denied.

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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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Paul and Judith Asselin, 2 Blue Heron Lane, Deerfield, NH 03037, Taxpayers; Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessor; and Chairman, Board of Selectmen, Town of Deerfield, PO Box 159, Deerfield, NH 03037.

Date: 5/12/06

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Anne M. Stelmach, Clerk