

**Walker and Gloria Richardson**

**v.**

**Town of Harrisville**

**Docket No.: 20183-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$373,600 (land \$197,800; buildings \$175,800) a single-family home on a .54-acre lot (the “Property”). 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 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’s neighborhood delineation is inexplicable and appears to be arbitrary;
- (2) the Calhoun assessment is a good example of the inconsistent property treatment;

- (3) the Property is already in a neighborhood (the historic district) of other properties that should all have a similar land values due to their situation on Harrisville Pond; and
- (4) the Property's assessment increased at a greater percentage than other properties in similar circumstances in Town.

The Town argued the assessment was proper because:

- (1) the "T" neighborhood has been consistently applied; and
- (2) the Taxpayers have not presented any market value evidence and therefore, have not carried their burden of proof.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

The Taxpayers testified the main issue they have was with the land portion of the assessment. They did not dispute the value placed on the building. In making the decision on value, however, the board must look at the Property's value as a whole (i.e. as land and buildings together) because this is how the market views value. For example, if the land portion of an assessment is too high but the building portion is too low and offsetting, the taxpayer is not aggrieved or paying a disproportionate tax burden. The supreme court has held that the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayers did not present any credible evidence of the Property's market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the level

assessment generally in the Town. See e.g. Appeal of Net Realty Holding Trust, 128 N.H. 795, 796 (1986); and Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985).

The Taxpayers' arguments centered on the application of the neighborhood codes. In particular, they focused on comparing the "T" neighborhood code of 300, which encompassed all the properties on Island, Canal and Prospect Streets (the "Harrisville Village waterfront properties") to the "S" neighborhood code of 275, which included the properties directly opposite the Property on the southwesterly side of Harrisville Pond. The more property specific "condition" factors were also higher for the Harrisville Village waterfront properties (ranging from 300 to 400) than the "condition" factors for Harrisville Pond properties, such as the Calhoun property, located on Main Street just west of the village area. The Taxpayers questioned why these similarly situated properties had a substantially lower neighborhood and "condition" factors. The Town argued, and based on the very limited market value available, the board agrees that the properties located in the core area of Harrisville Village enjoy the historic and scenic amenities to a greater degree than those just west of the village on Main Street. While the board acknowledges there may have been unique motivations on the part of the Bayles' in their purchase of the property just past the Taxpayers', the privacy, Harrisville Pond frontage and view and location in the historic village area are all positive factors that affect the Taxpayers' Property to a greater extent than those on Main Street (see Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). All relevant factors affecting a property's market value must be considered in determining a proportionate assessment). The Town conceded that part of the problem was that the land factors on the Main Street properties may be too low, thus exacerbating the assessment differences between the two areas. However, the fact that some other property may be underassessed as the result of the land factor methodology used during the 2003 reassessment does not form the basis for the Taxpayers

receiving an abatement. The board finds the assessed value does not appear unreasonable for all the positive property attributes noted above. Nonetheless, the Taxpayers' concerns and those raised in the other eight 2003 Harrisville appeals prompted the board under its RSA 71-B:16 authority to open a reassessment investigation (Docket No. 20668-05RA). In that docket, the board's senior review appraiser noted in her June 1, 2005 report problems with the assessment models, inconsistent or unclear handling of sales data and condition factors and inconsistent neighborhood delineations. These concerns led the Town to enter into a contract with Avitar to address prospectively those concerns. The board noted in an August 15, 2005 order that it would have ordered some reassessment remedy if the Town had not undertaken one on its own.

Nonetheless, despite the reassessment methodology concerns noted both by the board and the Taxpayers, those concerns alone do not lead to a finding of disproportionality without probative evidence that the resulting total assessment is disproportionate to market value and the Town's level of assessment. The New Hampshire Supreme Court's ruling in Porter v. Town of Sanbornton, 150 N.H. 363 (2003) is instructive.

To carry the burden of proving disproportionality, the taxpayer must establish that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The plaintiffs produced no evidence regarding the fair market value of their properties. Rather, they attempted to prove disproportionate tax burdens by demonstrating that the town employed a flawed method.

We have long held that however erroneous, in law or in fact, the assessment may be, we will abate only so much of a taxpayer's tax as in equity the taxpayer ought not to pay. Edes v. Boardman, 58 N.H. 580, 586 (1879). This principle necessarily follows from the language of the statute that commands the abatement of a taxpayer's taxes as justice requires. *Id.* Justice requires that an order of abatement will not relieve the taxpayer from bearing his or

her share of the common burden of taxation despite any error in the process of determining the amount of that share.

Id. at 368.

While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result.

Id. at 369.

The Taxpayers also questioned the significantly larger increase in their assessment compared to some other properties. In determining whether an assessment is appropriate, assessments must be compared to market value versus being compared to other assessments. The board has no way of knowing if the other assessments are accurate. Further, a greater percentage increase in assessments following a town-wide reassessment is not a ground for an abatement since unequal percentage increases are inevitable following a revaluation. Revaluations are implemented to remedy past inequities and adjustments will vary both in absolute numbers and in percentages from property to property. Increases from past assessments are not evidence that 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 Sunapee, 126 N.H. 214 (1985).

For all the above reasons, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

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: Walker and Gloria Richardson, 5 Island Street, Post Office Box 337, Harrisville, New Hampshire 03450, Taxpayers; Lynn Cook, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representative; and Chairman, Board of Selectmen, 705 Chesham Road, Harrisville, New Hampshire 03450-5529.

Date: 4/13/06

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Anne M. Stelmach, Clerk