

**Thomas R. and Kathleen R. Hamon**

**v.**

**Town of Harrisville**

**Docket No.: 20389-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessments of: Map 30/Lot 74-01 - \$60,000 (land only – a .1-acre lot) and Map 30/Lot 74-00 - \$263,900 (land - \$147,600; buildings - \$116,300 – a single-family home on a 6.1-acre lot) (the “Property”). For the reasons stated below, the appeal for abatement is granted to the Town’s recommended revised assessments of \$15,000 for Lot 74-01 and \$242,900 for Lot 74-00.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 their burden but only to the level of the Town’s recommended assessments.

The Taxpayers argued the assessments were excessive because:

- (1) the initial assessments are disproportionate due to the subjective assignments of the neighborhood delineations;
- (2) there are four different neighborhood delineations on the Taxpayers' street;
- (3) the Taxpayers do not have complete control of the small, waterfront lot as a neighbor has a deeded right-of-way to full use of this lot;
- (4) neighborhood "T" should be abolished as there are only slight differences between the "T" and "S" neighborhoods; and
- (5) the Property's market value was \$200,000 on April 1, 2003 based on an independent appraisal.

At hearing the Town, represented by Avitar Associates of New England, Inc. ("Avitar") recommended the assessments to be revised to \$15,000 for Lot 74-01 and \$242,900 for Lot 74-00 and argued the revised assessments were proper because:

- (1) the Taxpayers' appraisal is flawed and should be disregarded due the appraiser's inconsistent treatment of the comparable sales; and
- (2) the neighborhood codes have been generally applied consistently throughout the Town; however to the extent the "S" neighborhood on Main Street to the west of the village underassessed those properties, the 2006 update being performed by Avitar will review new market data before delineating neighborhoods.

### **Board's Rulings**

Based on the evidence, the board finds the Town's recommended assessments of \$15,000 for Lot 74-01 and \$242,900 for Lot 74-00 to be reasonable.

The Taxpayers contend there are many inconsistencies resulting in disproportionate assessments in the Town after the revaluation. The board notes the previous contract assessor, Nyberg & Purvis Associates, Inc. (“Nyberg”), determined the assessments that were being defended at the hearing by the Town’s new contract assessor, Avitar. One of the Taxpayers’ concerns is the significant and dramatic increase in the Property’s assessment on a percentage basis. Any increases from past assessments are not evidence that a taxpayer’s property is disproportionately assessed. A greater percentage increase in the assessment 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. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayers further questioned the subjective determination of where neighborhoods began and ended, pointing out there are four, separate, defined neighborhoods on their street alone. They raised concerns about the accuracy of the assessment methodology employed during the 2003 reassessment performed by Nyberg and the inconsistent application of land assessment models through the land adjustment factors and the neighborhood delineations. The nine 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 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 submitted an appraisal performed by John T. Newcombe, a New Hampshire Certified General appraiser (the "Appraisal"). The Appraisal estimated the Property's May 5, 2003 market value at \$200,000. For several reasons, some of which were pointed out during the hearing, the board cannot give the Appraisal's market value conclusion significant weight due to some flaws in its methodology. For example, one of the comparable

sales (sale number 1) was a transfer from the owner of the property to a tenant in the property.

This type of transfer brings into question whether this sale was an arm's-length transaction.

Additionally, the adjustments, or lack thereof, to sales 2 and 3 for any influence of the waterfront raises questions whether these sales had been compared and adjusted appropriately with respect to the Property. As previously stated, these flaws in the Appraisal give the board little confidence the Appraisal's estimate of value is accurate.

For all these reasons, the board finds the best evidence of the Property's assessment to be that submitted by the Town. These values reflect both the positive and negative attributes of both lots including the excellent view of Harrisville Pond afforded by the elevated level of Lot 74, its relative proximity directly adjacent to the historic buildings of Harrisville Valley, the access to Harrisville Pond afforded by Lot 74-01 and the fact that Lot 74-01 is across a busy state highway (also known as Main Street) and is encumbered by an easement that provides access rights for another nearby property owner. The totality of value of \$257,900 (Lot 74-01: \$15,000 and Lot 74-00: \$242,900) in light of these factors does not appear unreasonable and would likely be supported by the Appraisals' value conclusion if appropriate adjustments were made to the comparables as discussed in the earlier paragraph.

If the taxes have been paid, the amount paid on the value in excess of \$15,000 for Lot 74-01 and \$242,900 for Lot 74-00 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: Thomas R. and Kathleen R. Hamon, Post Office Box 298, 32 Main Street, Harrisville, New Hampshire 03450, Taxpayers; Chairman, Board of Selectmen, 705 Chesham Road, Harrisville, New Hampshire 03450-5529; and Gary J. Roberge and Lynn Cook, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representatives.

Date: 4/13/06

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Anne M. Stelmach, Clerk