

**Raymond and Gail Rees**

**v.**

**Town of Windham**

**Docket No.: 21089-04PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment of \$250,000 (land \$118,000; building \$132,000) on Map 24F, Lot 1608, a house on 1.40 acres (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) it has increased disproportionately compared to the assessments of other neighboring properties and other garrison-style homes in the Town;
- (2) the house on the Property is one of the smallest dwellings on Heritage Hill Road; and

(3) recent sales of properties, with slightly larger living areas on Heritage Hill Road, indicate the Property had a market value in the mid \$330,000 range.

The Town argued the assessment was proper because:

(1) an appraisal prepared by the Town's Assessor, Rex A. Norman, estimated the Property's April 1, 2004 market value at \$358,000 based on a sales comparison approach utilizing eight sales of similar properties;

(2) as a result of the Taxpayers' abatement request and as part of the Town's cyclical data review process, Mr. Norman reviewed the assessments of all 60 properties on Heritage Hill Road for consistency and accuracy and found no significant errors; and

(3) in 2004, the calculated gross living area of the garrison-style dwelling was inadvertently understated by 72 square feet and did not include the one foot overhang of the second floor.

Before ruling on the merits of the case, the board finds a comment on the procedural path this appeal followed is appropriate. On November 5, 2007 the Taxpayers sent a letter to the Town's Assessor, with an indication the letter was "cc'd" to the Town's counsel, requesting answers to certain questions within thirty (30) days. According to the Town's counsel, the letter was not personally received by him at his office for unknown reasons. The Town's Assessor did not respond to the Taxpayers' request and apparently did not contact the Town's counsel as he stated in his January 8, 2008 letter to the board's clerk "I became aware of the letter of Mr. Rees from the Board Clerk in late November." The board finds the Town had constructive notice of the Taxpayers' request early in November and should have responded either through the Town's Assessor or Town's counsel. The apparent lack of communication between the Assessor and Town counsel caused the Taxpayers' questions to go unanswered. The board fully understands the Town's concerns regarding the relevance of the Taxpayers' questions regarding the

Property's assessment for years other than 2004. However, some response, albeit very brief, is warranted and no response is unproductive. The purpose of the abatement and appeal process is to ensure assessment proportionality and equity and should not necessarily be viewed as a confrontational or competitive exercise. The board encourages all parties to communicate with each other in a responsive and timely manner. A further comment, but on a somewhat different issue, is in regard to the Town counsel's statement in the Respondent's Memorandum that "[a]ll but the simplest tax abatement cases require the use of experts." All participants in the abatement and appeal process should receive the same consideration whether or not they have retained the assistance of legal counsel or consulted experts.

### **Board's Rulings**

Assessments must be based on market value. See RSA 75:1. The board finds the appraisal performed by Mr. Norman to be the best evidence of the Property's market value. The assessment for the Property was determined using a computer assisted mass appraisal ("CAMA") system. After the appeal was filed, however, Mr. Norman performed a property specific review and submitted his appraisal (Municipality Exhibit No. A). Mr. Norman utilized a sales comparison approach and determined the Property's April 1, 2004 market value was \$358,000. Applying the Town's equalization ratio of 72.7%, stipulated to by the parties at the hearing, to the Town's market value estimate yields an equalized assessment of \$260,300 [ $\$358,000 \times 0.727 = \$260,300$  (rounded)]. The Property's assessed value is within 2-3% of the equalized market value estimate determined by Mr. Norman. In Mr. Norman's appraisal, the fact the comparable sales had very small net adjustments made to them is a good indication they were very similar to the Property and good comparable sales. The board finds the adjustments made by Mr. Norman to be reasonable and in keeping with standard appraisal methodology.

Further, the Taxpayers testified the Property was worth a value in the mid \$330,000 range. They based their opinion on the sales of somewhat similar properties in the neighborhood but did not provide any specific market derived data in support of this figure. The board took the midpoint (\$335,000) of the Taxpayers' value range and equalized it using the Town's 72.7% level of assessment and found the resulting value (an indicated assessment of \$243,545) was also within 2-3% of the Town's current assessment. Determining assessments is not an exact science but is a matter of informed judgment and experienced opinion. This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. The appealed assessment is within 2-3% of each party's equalized market value indication and well within acceptable assessing variability.

The Taxpayers submitted a variety of calculations in Taxpayer Exhibit No. 1 comparing the Property's assessment on a per square foot basis as well as by age of dwelling. Further, the Taxpayers submitted several charts (also contained in Taxpayer Exhibit No.1) showing the percentage increase in the Property's assessment compared to some other properties on the same street (Heritage Hill Road). The board finds the assessment increase analysis provided by the Taxpayers is not evidence the Property is disproportionately assessed. 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 Town of Sunapee, 126 N.H. 214 (1985). RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and to reappraise such real estate as has changed in value. The fact the Property's assessment increased by varying percentages over several years is not evidence it is disproportionately assessed.

Further, Mr. Norman testified the Town is undergoing a cyclical review of all properties in the Town. As part of the cyclical review process and in preparation for this appeal, he inspected and reviewed all 60 properties on Heritage Hill Road and found few, significant, value influencing errors. The board finds this in depth review is some evidence of consistently determined assessments throughout the neighborhood.

For all the previously discussed reasons the board finds the Taxpayers failed to carry their burden of proof and the appeal is 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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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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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: Raymond and Gail Rees, 8 Heritage Hill Road, Windham, NH 03087, Taxpayers; Bernard H. Campbell, Esq., Beaumont & Campbell, One Stiles Road, Suite 107, Salem, NH 03079, counsel for the Municipality; and Chairman, Board of Selectmen, Town of Windham, P.O. Box 120, Windham, NH 03087, Municipality.

Date: January 30, 2008

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Anne M. Stelmach, Clerk