

**William H. Fassbender and Joyce S. Terrell**

**v.**

**Town of Winchester**

**Docket Nos.: 21951-05PT/22899-06PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2005 and 2006 assessments of \$254,500 (land \$50,500; building \$204,000) on Map 6/Lot 28-4-10 at 50 Acorn Drive, a single-family home on a 2.4 acre lot (the “Property”). For the reasons stated below, the appeals for abatement are granted.

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 assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessments were excessive because:

- (1) the Taxpayers purchased the lot in 2001 and constructed a house in 2002;
- (2) a prior assessing company (Nyberg Purvis & Associates (“Nyberg”)) did the 2004 assessment and made errors which resulted in an abatement to \$175,200;
- (3) this same company then increased the assessment in 2005 by \$79,300;
- (4) another company (Avitar Associates of New England (“Avitar”)) was hired in 2006 and denied the abatement request;
- (5) comparisons to the ratings and assessments on other properties on the same street (Acorn Drive) demonstrate the Property is overassessed; and
- (6) as stated in Taxpayer Exhibit No. 1, the “true market value” of the Property was \$209,452.53 in tax year 2005 and, because of a decline in market values of at least 5%, the tax year 2006 value was \$198,979.91.

The Town argued the assessments were proper because:

- (1) the Town’s prior assessment company (Nyberg) performed a revaluation in tax year 2004 and a revaluation update was done in tax year 2005 to correct grading and other assessment inconsistencies;
- (2) the current assessment company (Avitar) has reviewed all the assessments and been out to the properties;
- (3) the Property is larger, newer and in better condition than the comparables on Acorn Drive and has a better design and quality than these comparables (see Municipality Exhibit No. A);
- (4) the value differences between the Property and the comparables are supportable and the assessments are not disproportional;

(5) in southern New Hampshire, there were only “minor” changes in home prices between 2005 and 2006 (see Municipality Exhibit No. B); and

(6) the Taxpayers did not submit any appraisal or other expert opinion of the market value of their Property in either tax year.

The level of assessment, as measured by the median computed by the department of revenue administration, was 100.9% in tax year 2005 and 92.5% in tax year 2006 and the parties agreed with these statistics.

### **Board’s Rulings**

Based on the evidence, the board finds the assessments on the Property should be abated to \$225,000 (rounded) in tax year 2005 (when the level of assessment was close to 100%) and \$231,300 (rounded) in tax year 2006 (\$250,000 x 92.5% level of assessment). The appeals are therefore granted.

Because of questions raised during the hearing regarding the quality and condition of the Property relative to others and whether the assessments were proportional to market value, the board asked one of its review appraisers to perform an inspection, review comparable assessments and sales, complete an independent evaluation and file a report. See the board’s April 3, 2008 Order. The board’s authority to utilize its review appraisers to aid its determination of the proportionality of assessments is clear. See RSA 71-B:14 and Appeal of Sokolow, 137 N.H. 642, 643-44 (1993). On May 21, 2008, Cynthia L. Brown, one of the board’s review appraisers, filed her report (the “Report”) in the form of a “summary appraisal.” The parties were copied with the Report and given twenty (20) days to file written comments.

The Taxpayers filed no written comments. On May 28, 2008, the Town, through its contract assessor, Avitar filed its comments. The Avitar comments note the Report “is a qualified and competent opinion of value for the one property [the Property],” but also makes more general observations discounting the value or relevance of any property-specific fee appraisal in comparison to a mass appraisal of all properties in a municipality.

The board disagrees with Avitar’s observations in important respects and finds the Report is the best evidence of the market values of the Property as of the two assessment dates. The board will first discuss its specific findings in these appeals before responding briefly to Avitar’s general comments regarding the assessment and abatement process as a whole.

The specific evidence presented at the hearing, summarized further in the Report, reflects the Property is an attractive and well-maintained, ranch-style single family home constructed in 2002 on 2.4 acres of land at 50 Acorn Drive. There were three other home sales on Acorn Drive and four other sales used by Ms. Brown in the Report. Based on her inspection, Ms. Brown concluded the Property, relative to the comparables, can be characterized as being “Average +” in quality and in “Good” condition and made what the board finds are appropriate adjustments for these characteristics in her comparative analysis grids. See Report, pp. 8 -10. Ms. Brown also applied reasonable adjustments for other differences (such as lot and building sizes and garages) and applied time adjustments of 12% in 2005 and 9% in 2006. Id. at 10. The board finds these time adjustments are well supported, even though they are at variance with the Taxpayers’ belief that prices were actually declining (by 5%) in 2006.

In brief, the board finds the methodology and conclusions contained in the Report to be reasonable. The board therefore finds the Property had a market value of \$225,000 for tax year

2005 and \$250,000 for tax year 2006, resulting in abatements to \$225,000 and \$231,300, respectively, when the levels of assessment in each year are taken into account.

Before concluding, the board will respond to Avitar's general comments on the application of fee appraisals to the assessment, abatement and appeal process. Both mass appraisals (undertaken by assessors using "CAMA" systems) and fee appraisals of individual properties have the same goal of arriving at a reasonable estimate of the market value of each property. Because market value is the basis for proportionality, see RSA 75:1, both methods can be used to achieve this goal. To suggest, however, that relative proportionality (i.e., how assessments within the municipality compare relative to each other rather than to the ultimate yardstick of market value) is contrary to the New Hampshire Constitution, the statutes governing property taxation, including RSA 75:1, and a well-developed body of case law.

Appeal of Andrews, 136 N.H. 61 (1992) is very much on point regarding this question. In Andrews, the supreme court agreed with the taxpayers that what matters is not proportionality relative to other similarly situated taxpayers (all condominium owners, for example), but to all property owners within the municipality, measured by the common benchmark of market value adjusted by the overall level of assessment:

The plaintiffs contend that the 10 percent differential results in unacceptable disproportionality in taxation violating part I, article 12 and part II, article 5 of the New Hampshire Constitution. We agree.

"[O]ur constitution mandates that all taxpayers in a town be assessed at the same proportion of [fair market value]." Public Serv. Co. of N.H. v. Town of Seabrook, 133 N.H. 365, 377, 580 A.2d 702, 709 (1990).

Andrews, 136 N.H. at 64.

When an abatement request is denied and an appeal is filed with the board, the board is obligated to review the basis for the Town's assessment (such as its use of a CAMA mass appraisal system to estimate values for all properties in the Town) along with all the other evidence presented. See RSA 71-B:11. (On appeal the board shall consider all evidence and "determine the issue de novo."); also RSA 76:16-a requires "the board after inquiry and investigation [to] make such order thereon as justice requires...." The board then determines what constitutes the best evidence of the market value of the property under appeal and this estimate is adjusted by the level of assessment in the Town to achieve proportionality.

The board has consistently recognized there is no one absolute indicator of market value, of course, but an appraisal, if reasonably performed and methodologically sound, is one accepted means of estimating market value. In other words, while Avitar is correct in observing there is "no one finite market value, but rather a range of values," this does not mean appraisal evidence must be ignored or disregarded simply because the Town performed a mass appraisal and generally (based on Town-wide statistics) achieved an acceptable level of proportionality for the Town as a whole.

Mass appraisal ratios and equity measures can be generally instructive of overall assessment equity, but not necessarily of the proportionality of an individual property assessment: "It is well settled that the test in an abatement case is whether the taxpayer is paying more than his [or her] proportional share of taxes." Andrews, 136 N.H. at 64, quoting from Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982).

If one were to adopt Avitar's reasoning, then no taxpayer could prevail on an abatement request or an appeal to the board because it would be assumed, if a recent reassessment generated good statistical indices (such as an acceptable median and COD (coefficient of

dispersion)), that each and every assessed value in the Town is proportional. Such reasoning is contrary to the framework established by the legislature to give taxpayers a viable means of challenging individual tax assessments and which has been in place in New Hampshire for many years. See, generally, RSA 76:16; 76:16-a; and 76:17.

For all of these reasons, the appeals are granted.

If the taxes have been paid, the amount paid on the value of the Property in excess of \$225,000 in tax year 2005 and \$231,300 in tax year 2006 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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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: William H. Fassbender and Joyce S. Terrell, 50 Acorn Drive, Winchester, NH 03470, Taxpayers; Loren J. Martin and Gary J. Roberge, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, representative for the Town; and Chairman, Board of Selectmen, Town of Richmond, 1 Richmond Road, Winchester, NH 03470.

Date: June 30, 2008

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Anne M. Stelmach, Clerk