

**William and Sharyn Newton**

**v.**

**Town of Middleton**

**Docket No.: 23035-06PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$289,800 (land \$81,700; building \$208,100) on Map 4/Lot 141, a single family home on 0.554 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property sold in January 2008 for \$250,000 after being marketed for more than a year with an original listing price of \$269,000;

- (2) the Taxpayers made some financing concessions to complete the transaction and the net selling price was approximately \$244,000;
- (3) the Town's comparable sales all occurred during the height of the real estate market in 2004 and 2005;
- (4) the adjustments made to the comparable sales the Town used compound the discrepancy between the Property's marketing history and the Town's assessed value; and
- (5) the assessment should not be more than the sale price.

The Town argued the assessment should be revised to \$273,800 due to some factual data corrections and the revised assessment is proper because:

- (1) an analysis using comparable sales with appropriate adjustments estimated the Property's market value to be between \$266,000 and \$335,000 on April 1, 2006;
- (2) it falls in the low end of the indicated market value range;
- (3) the Town has been and continues to be proactive in maintaining proportionate assessments as evidenced by its review and adjustment of values Town wide in 2004 and 2006 and ongoing review for 2008 values due to changes in economic conditions; and
- (4) no further abatement is warranted.

The parties agreed the 2006 level of assessment was reasonably estimated by the department of revenue administration's 2006 ratio of 99.7%.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$273,800 based on the Town's recommendation at hearing to correct for a portion of the garage being listed and valued as living space.

The board finds this revised assessed value is supported by all the market evidence submitted at hearing.

First, the Taxpayers' listing and ultimate sale of the Property in January of 2008 for \$250,000 is within 10% of the revised assessed value and even closer if an adjustment is made for the decline in the market from April 1, 2006 to January, 2008. The Town's representatives testified that, based on their experience in performing the statistical updates in 2006 and 2008, the general market, and in particular the water front and water access properties, started to decline in 2007 and, thus, some market adjustment would be appropriate from the sale date of January, 2008 back to April 1, 2006.

Second, as part of their appeal, the Taxpayers submitted an appraisal prepared for refinancing purposes that indicated a market value of \$274,500 as of December 14, 2005, less than four months prior to the April 1, 2006 assessment date. This appraisal, on its face, supports the Town's revised assessed value.

Third, the Town's market analysis utilizing sales of four comparable properties also generally supports the revised assessed value.

Proportionality for tax purposes is based upon an estimate of market value. See RSA 75:1. Arriving at such a market value estimate and the resulting proper assessment is not an exact science, but rather a process requiring the use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). Consequently there is never one exact, precise or perfect assessment; rather, there is an acceptable range of value which represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). The board finds the Town's recommended revised assessment at hearing of \$273,800 results in such an estimate and is supported by the market evidence as found above. Therefore, the board grants an abatement to the revised assessment of \$273,800.

If the taxes have been paid, the amount paid on the value in excess of \$273,800 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(g). 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

---

Paul B. Franklin, Chairman

---

Douglas S. Ricard, Member

William and Sharyn Newton v. Town of Middleton

Docket No.: 23035-06PT

Page 5 of 5

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: William and Sharyn Newton, 14 Lambert Court, Rochester, NH 03867, Taxpayers; Chairman, Board of Selectmen, Town of Middleton, 182 Kings Highway, Middleton, NH 03887; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 5/6/09

\_\_\_\_\_  
Anne M. Stelmach, Clerk