

**James M. and Karen A. Ryan**

**v.**

**Town of Stratham**

**Docket No.: 25220-09PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$435,200 (land \$148,200; building \$287,000) on Map 2/Lot 4, a single family home on a 1.00 acre site (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 is improved with a cape style house with a “bow” roof, but the roof line is not “custom” and, while the improvements are in average condition, they are twenty (20) years old;

(2) the Property is located on a small cul-de-sac (Drury Plains Road) with six other homes, is directly off of a heavily traveled road (Guinea Road) that is difficult to navigate during early mornings and late afternoons due to the close proximity of a public school;

(3) the Taxpayers reviewed three sales of cape-style homes in Town from April 2007 through April 2009 with sale prices ranging from \$365,000 to \$385,000, and, based on those three sale prices, the assessed value of the Property is too high (see Taxpayer Exhibit No. 1);

(4) the Property is most similar to 9 William Circle, which sold in June 2008 for \$365,000 in its location, size and quality and condition of the improvements;

(5) there is no basis for the additional 10% adjustment between the Property's neighborhood code (G) and the comparables' neighborhood code (F); and

(6) the market value of the Property should be \$370,000 based on averaging of the sales prices of the three comparable sales.

The Town argued the assessment was proper because:

(1) the Property is located in a small neighborhood that consists of seven custom homes and is buffered by 50 acres of conservation land and there have been no recent sales of properties on Drury Plains Road;

(2) the neighborhoods the Taxpayers' comparables are located in are not as desirable as the Property's neighborhood and all neighborhood factors have been taken into consideration (e.g., 9 William Circle is located in a large development of over 50 homes, many of them cookie cutter style homes, and is located next door to a mobile home);

(3) the Drury Plains neighborhood is considered "up one notch" from the neighborhoods the Taxpayers' comparable sales are located in, and it would have been up more than one notch except that it is accessed from Guinea Road, which is heavily traveled;

(4) the Town presented eight comparable sales which are located in “F”, “G”, “H” and “J” neighborhoods, and have sale prices ranging from \$322,500 to \$595,000, and, when appropriate adjustments are made to account for location and physical differences between the comparable sales and the Property, the sale prices support the proportionality of the assessed value (see Municipality Exhibit A);

(5) the Property’s quality of construction and neighborhood are dissimilar to the comparable sales relied upon by the Taxpayers’ and their methodology of averaging the three sale prices is improper; and

(6) the Taxpayers failed to prove the assessment was disproportional and the appeal should be denied.

The parties agreed the level of assessment was 98.7%, the median ratio calculated by the department of revenue administration. To assist in their deliberations, the board viewed the exterior of the Property and all comparable sales (submitted by the Taxpayers and the Town) on July 30, 2012.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayers did not carry their burden of proving disproportionality and the appeal is denied.

Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions).

To determine whether an abatement is warranted, the board considers and weighs the market value evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of

City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, in making its findings where there is conflicting evidence, the board must determine for itself the credibility of the witnesses and the weight to be given the testimony of each because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

During its deliberations, the board carefully reviewed and considered the significant amount of market evidence presented by both the Taxpayers and the Town. The board finds it can give no weight on the Taxpayers’ comparable sales, and therefore, the Taxpayers have not met their burden of proving disproportionality. Specifically, the Taxpayers’ presented three comparable sales, including properties located at 9 William Circle, 15 William Circle and 3 Shannon Drive. These properties sold in 2007 and 2008 with sale prices of \$365,000, \$385,000 and \$383,000, respectively. Based on averaging the sale prices, the Taxpayers estimated a market value of the Property, as of April 1, 2009, of \$370,000.

The board cannot place any weight on this estimate of market value, however, as it is improper to simply calculate a mathematical average sale price to arrive at an estimate of value. This methodology does not arrive at a credible estimate of market value as it does not consider nor adjust for the physical differences between the Property and the comparable sales and does not consider any market appreciation/depreciation between the 2007 and 2008 sale dates and the April 1, 2009 date of assessment. If the appropriate adjustments were made to account for all

physical differences between the Property and the comparable sales, the adjusted sale prices of the comparable properties would likely be supportive of the equalized assessed value.

For example, the board noted on its view the Property's neighborhood was more desirable, and therefore more valuable, than the William Drive neighborhood. It would be appropriate to make an upward adjustment to the sale prices of the properties on William Drive to account for this difference.

Another example of physical differences not accounted for is the size of the properties. According to the assessment-record cards submitted by the Taxpayers, the Property has an effective area of just over 3,000 square feet and the comparable sales have effective areas ranging from approximately 2,800 square feet to just under 2,900 square feet. While this difference in square footage is not so large to render the properties "not comparable" to the Property, generally buyers will pay more for larger homes than smaller ones and therefore an upward adjustment to the comparable sales would be warranted. (See Taxpayer Exhibit No. 1.)

The board finds the Town's application of neighborhood codes and the resulting land values were applied in a generally consistent manner. Further, the descriptions of the neighborhoods testified to by the Town's Assessor (Ms. Andrea Lewy) at the hearing and the photographs contained in Municipality Exhibit A were confirmed during the board's view on July 30, 2012. The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

For all these reasons, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Michele E. Lebrun, Chair

---

Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: James M. and Karen A. Ryan, 3 Drury Plains Road, Stratham, NH 03885, Taxpayers; and Chairman, Board of Selectmen, Town of Stratham, 10 Bunker Hill Avenue, Stratham, NH 03885.

Date: 12/19/12

---

Anne M. Stelmach, Clerk