

**Brian Gettings**

**v.**

**Town of Winchester**

**Docket No.: 25574-10PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2010 abated assessment of \$203,942 on Map 8, Lot 27, 148 Clark Road (the “Property”). The Property consists of 52 acres of land in current use assessed at \$3,926 and one acre of land with a single-family residence assessed ad valorem at \$200,016. [The Taxpayer also owns another parcel consisting of 38 acres on Fenton Hill Road, Map 8, Lot 26 (“Lot 26”), which the parties agreed at the hearing was proportionally assessed.] For the reasons stated below, the appeal for abatement on the Property is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayer carried this burden.

The Taxpayer argued the assessment on the Property was excessive because:

(1) the Property was purchased as a 53 acre working farm in June, 2007, primarily because it had 15 acres of tillable farm land and even though he knew the house was in very bad condition and needed costly renovations;

(2) of the total \$255,000 paid, the Taxpayer believes a reasonable allocation was \$180,000 for the Property and \$75,000 for Lot 26 which he purchased at the same time;

(3) the assessed building value is too high because of serious problems including rotted and unstable floor joists, termite issues, an antiquated (“pre-1920”) electrical system and outdated bathroom and kitchen fixtures, a collapsing garage, multiple roof leaks, bent and broken windows and unpainted siding, evident in the photographs submitted (Taxpayer Exhibit No. 1), and all of these problems still exist on the Property;

(4) given the poor condition of the house, it was worth no more than \$65,000 and it will take much more than the \$38,000 estimated by the Town to improve its condition to the point where it is comparable to the Town’s sales, which are described to be in much superior condition (as shown in Taxpayer Exhibit No. 2); and

(4) the assessed building value should be abated substantially.

The Town argued the assessment on the Property, as already abated, was proper because:

(1) after review of the Taxpayer’s abatement application and an April, 2011 inspection of the Property, the Town abated the original assessment substantially (from \$241,542 to \$203,942);

(2) the Town applied a total of 48% depreciation (including 12% functional depreciation – equivalent to a \$38,000, rounded, “cost to cure” estimate) when it abated the original assessment and was not provided with documentation to support a larger adjustment;

(3) a comparable analysis using three sales presented in the form of a grid (in Municipality Exhibit A) takes into account size, quality, condition and other differences and indicates a value range of \$201,480 to \$242,290 for the Property, which is supportive of the equalized abated assessment (\$203,942 assessment divided by 98.3% level of assessment = \$207,500, rounded, equalized market value); and

(4) the Taxpayer did not meet his burden of proving a further abatement is warranted

The parties agreed the level of assessment in the Town was 98.3% in tax year 2010, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer met his burden of proving disproportionality and the assessment on the Property for tax year 2010 should be further abated to \$176,926. The appeal is therefore granted for the following reasons.

In arriving at a proportional assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). To determine whether an abatement is warranted, the board must determine whether the Property is assessed at a higher level than the level generally prevailing in the municipality. See, e.g., Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985).

The board therefore considers and weighs all of the 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 market value findings, the board must determine for itself issues of credibility and the

weight to be given each piece of evidence 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. at 68 ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The power to grant abatements is prescribed by statute and RSA 76:16-a grants the board authority to “make such orders as justice requires.” This gives the board some discretion to determine the amount of abatement needed to achieve an equitable and proportional assessment. Cf. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality’s general level of assessment, represents a reasonable measure of one’s tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

In his appeal document, the Taxpayer stated the market value of the Property was “\$160,000.” He estimated a much lower value at the hearing (“\$100,000”), presumably based on a \$65,000 building value and a land value of approximately \$35,000, but the board finds there is a lack of evidence to support a market value in that lower range.

The Taxpayer testified he was an experienced building contractor and was quite familiar with the numerous and very serious problems with the house, particularly the rotting joists and other structural issues, and the high cost of correcting them. Because another assessing employee had inspected the Property in April, 2011, the Town’s representative at the hearing acknowledged she had no firsthand knowledge of the physical condition of the Property, but was relying instead on the notes taken by the other employee, including his cost to cure estimate of \$38,000 which the Taxpayer argued was too low.

Reviewing the photographs and the Taxpayer's testimony, the board has no doubt the house is in very poor physical condition and this has a serious negative impact on its market value. The Taxpayer's explanation that he bought the Property, knowing its poor condition, primarily because of the 15 acres of tillable land for farming, was not disputed by the Town. 52 acres of land on the Property, including this tillable land, is in current use and cannot be assessed at its market value. The board must therefore review and weigh all of the evidence presented to determine whether the Town's ad valorem assessment for the remaining one acre of land and single-family residence not in current use is disproportional.

The board finds the three sales presented by the Town (in Municipality Exhibit A) as being supportive of the proportionality of the assessment have notable size, quality and other differences with the Property which diminish their comparability. The magnitude of these differences is reflected in the "Gross Adjustments" calculated in the Town's sales grid (\$158,680, \$283,100 and \$295,490, respectively). Reviewing the descriptions and photographs of these sales in Taxpayer Exhibit No. 2, the board finds they differ substantially from the Property and are of a much better overall quality and condition. The second comparable, for example, is described as a "charming, well maintained home" with "modern upgrades" and "[u]pgraded plumbing and electrical systems," and the first comparable is described as a "[v]ery well preserved" and "stunning . . . antique home" in the "Georgian-Federal style," with five working fireplaces.

The house on the Property is much larger than the comparables (3,940 square feet compared to 3,321, 1,970 and 1,678 square feet) and the \$70 per square foot adjustment calculated in the Town's sales grid leads to very large adjustments. In the board's experience, while a knowledgeable buyer is likely to pay more for a larger house, the relationship between

building area and price is not as sizeable, linear and uniform as reflected in the Town's grid.

Applying a more moderate, blended adjustment for size (say \$50 per square foot) to the three comparables reduces the upward adjustments in the Town's sales grid significantly for this feature (by approximately \$12,000, \$39,000 and \$45,000, respectively) and the board finds this is more reasonable.<sup>1</sup>

The board also finds the cost to cure adjustment of \$38,000 in the Town's grid to be overly conservative given the relatively poor condition and quality of the house on the Property in comparison to these three sales. Based on the photographs and testimony presented, the board finds a \$50,000 cost to cure estimate (approximately 30% higher than the Town's adjustment) is more reasonable and can be applied in lieu of changing the "Condition" and "Quality" adjustments in the Town's grid. In the grid, the Town made only relatively small (\$10,000 and \$20,000) negative adjustments for "Condition" and considered two of the houses (Comparable #s 2 and 3) to be of lower "Quality" than the Property, which is not supported by the evidence presented.

Making the adjustments for building size differences and cost to cure described above changes the range of calculated values in the Town's grid to \$177,100, \$181,500 and \$185,050 for Comparable #s 1, 2 and 3, respectively, leading to an indication of value of approximately \$180,000 for the Property using the Town's approach. Applying the 98.3% level of assessment for 2010 results in an indicated assessed value of \$176,940. Deducting the assessed ad valorem (\$36,100) and current use (\$3,926) land values results in a residual building value of \$136,900, rounded.

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<sup>1</sup> Stated another way, the board finds it is more reasonable to conclude a potential buyer evaluating the size difference between Comparable #3 and the Property, for example, would be willing to pay no more than about \$113,000 (instead of about \$158,000) extra for a house with a building area of 3,940 square feet (the Property) compared to one with 1,678 square feet (Comparable #3), all other things being equal.

The board finds an abated building value of \$136,900 achieves a proportional assessment for the Property. A building value in this range can also be reconciled with the calculations on the Town's assessment-record card by increasing the "functional depreciation" from 12% to 20%, which the board finds to be reasonable based on the evidence presented.

In summary, the board finds the assessment on the Property should be abated to \$176,926 (\$136,900 building value added to unchanged \$36,100 ad valorem and \$3,926 current use land values). The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$176,926 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 assessments for subsequent years.

RSA 76:17-c, I and II.

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,

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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

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Brian Gettings, 148 Clark Road, Winchester, NH 03470, Taxpayer; Chairman, Board of Selectmen, Town of Winchester, 1 Richmond Road, Winchester, NH 03470; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: March 12, 2013

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Anne M. Stelmach, Clerk