

**Mary Ann and Kenneth J. Sullivan**

**v.**

**Town of Temple**

**Docket No.: 25647-10PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” tax year 2010 total assessment of \$659,900 on the “Property,” consisting of the following two lots:

\$483,200 on Map 08A/002-3-8, 179 Stonegate Farm Road, a single family home on 5.176 acres (“Lot 8”); and

\$176,700 on Map 8A/002-3-9, located on Bellas Bottom Lane, a 5.047 acre vacant residential lot (“Lot 9”)

The Taxpayers own several other lots in the Town in separate ownership (through a revocable trust) which are in current use and did not file appeals on those lots. For the reasons stated below, the appeal for abatement on the Property is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the total 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 total assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers, represented by Kenneth J. Sullivan<sup>1</sup> at the hearing, argued the assessments were excessive because:

- (1) Stonegate Farm, where these lots are located, is separate and distinct from the adjacent "Timberdoodle Club," a private fishing and hunting club, where membership is by "invitation only" and is not tied to ownership of a Stonegate Farm lot;
- (2) the Town's practice of placing (on the assessment-record card) a separate \$75,000 "features" value for lots within the Stonegate Farm subdivision, in addition to utilizing a higher ("Average +30") land value, is 'confusing' and 'unfair';
- (3) an appraisal prepared by Richard Rockwood (Taxpayer Exhibit No. 2, the "Rockwood Appraisal") estimated the market value of Lot 8 was \$412,000 as of the assessment date and Mr. Rockwood, as stated in the appeal document, estimated the market value of Lot 9 to be \$75,000, and these estimates are the best evidence of value; and
- (4) the assessment on the Property should be abated to a total of \$487,500 (\$412,000 for Lot 8 and \$75,000 for Lot 9, as estimated by Mr. Rockwood), adjusted by the level of assessment in the Town.

The Town argued the assessments were proper because:

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<sup>1</sup> Richard Rockwood attended the hearing with Mr. Sullivan. Mr. Rockwood signed Section J of the appeal document as the Taxpayers' "representative," a practice permitted for non-attorneys by RSA 71-B:7-a and Tax 207. Mr. Rockwood, however, is a licensed real estate appraiser in the State of New Hampshire and was hired by the Taxpayers to prepare an appraisal presented as evidence in this appeal to support a tax abatement. As a licensed appraiser, Mr. Rockwood is obligated to perform his analysis and complete his appraisal report in compliance with the appropriate sections of the Uniform Standards of Professional Appraisal Practice ("USPAP") and he states, on page 5 of his appraisal, that it was prepared in compliance with USPAP. The Ethics Rule of USPAP (on p. U-7) specifically states "[a]n appraiser. . . must not advocate the cause or interest of any party or issue." In light of this prohibition, the board determined, prior to opening the hearing, Mr. Rockwood could either appear as an advocate representative for the Taxpayers or act as an expert appraiser witness, but not both because of the inherent conflicts this rule was intended to address. After conferring with Mr. Rockwood, Mr. Sullivan decided he would act as the Taxpayers' representative at the hearing and Mr. Rockwood would appear solely as an expert appraiser witness.

- (1) the Town performed revaluations in 2004 and in 2009 and has recognized for some time that lot values in Stonegate Farm are positively influenced by their proximity to the Timberdoodle Club (as evidenced in part by joint marketing activity; see, e.g., Municipality Exhibit A);
- (2) Stonegate Farm is a Planned Residential Development (“PRD”) which includes covenants intended to enhance property value and creates “open space” and substantial common areas owned by the Stonegate Farm Homeowners Association;
- (3) the Town assessed all of the Stonegate Farm lots consistently with the “\$75,000” features value;
- (4) the Rockwood Appraisal failed to adjust the comparable sales for location differences and did not apply reasonable adjustments for other factors such as size, and, when these adjustments are made, the Rockwood Appraisal is actually supportive of the assessed value of Lot 8 (when equalized by the level of assessment);
- (5) even without such adjustments, the Rockwood Appraisal estimates a value (\$412,000) for Lot 8 within 8% of the indicated value of the Town’s assessment (\$483,200 divided by 108.1% = \$447,000, rounded) and the Town’s assessment of Lot 9 is also consistent and reasonably proportional; and
- (6) the appeal should be denied.

The parties agreed the level of assessment for tax year 2010 was 108.1%, the median ratio calculated by the department of revenue administration. At the March 12, 2013 hearing, the board left the record open for the limited purpose of obtaining the Town’s assessment-record card (“ARC”) for the Stonegate Farm Homeowner’s Association property (held in the name of “Stonegate Farm, LLC”); the Town provided copies of this document to the board, the Taxpayers and their appraiser with a March 15, 2013 letter from the Town’s assessor.

**Board's Rulings**

Based on the evidence presented, the board finds the Taxpayers failed to prove disproportionality. The appeal is therefore denied.

To be proportional, assessments must be based on market value adjusted by the level of assessment. See RSA 75:1 and Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003).

Moreover, when a taxpayer owns more than one parcel within a municipality, proportionality requires consideration of the entire estate. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

Even if a taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, the taxpayer still has the burden of proving the aggregate value of the Property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007). Thus, in order to prevail in this appeal, the Taxpayers have the burden of proving the total market value of the Property was less than \$610,000, rounded (\$659,900 total assessment divided by 108.1% level of assessment = \$610,453.28).

The Taxpayers purchased Lot 8 for \$670,000 in April, 2006 and Lot 9 in September, 2006 for \$170,000 (a total of \$840,000). While Mr. Sullivan testified as to the motivation he and his wife had for purchasing these lots, there was no evidence presented to suggest the prices paid did not reflect their market values. A value decline to the amount reflected in the indicated assessment (\$610,000) is about 27% in four years, or an average simple arithmetic decline of about 6.75% in each year.

The Taxpayers relied principally on the Rockwood Appraisal and the testimony of Mr. Rockwood. According to Mr. Rockwood, the total value of the Property was no more than

\$487,500 as of the April 1, 2010 assessment date, based on the estimate of \$412,000 for Lot 8 in his appraisal and his separate estimate of \$75,000 for Lot 9. If the market value of the Property was \$487,500, then the decline in value from the \$840,000 total purchase price would have been almost 42% or about 10.5% each year. The board finds this estimated rate of decline to be overly high, given the likelihood of some appreciation prior to the downturn in the economy in 2008 and 2009 and the somewhat offsetting effects of this trend on real estate values.

While the parties do not dispute the market value of the Property declined somewhat since the time of purchase, the magnitude of that decline is very much in dispute. In this regard, the principal area of dispute between Mr. Rockwood, the Taxpayer's appraiser, and the Town's assessing contractor (Avitar Associates) is not the assessed value of the house and the other improvements, but rather the assessed value of the land (including the \$75,000 features value for each lot in Stonegate Farm). This is evident because, if \$150,000 is added to Mr. Rockwood's total market value estimate (for Lot 8 and Lot 9), the resulting value (\$637,500) is actually higher, not lower, than the \$610,000 indicated value of the total assessment on the Property.

The Rockwood Appraisal estimating the value of Lot 8 is a summary appraisal report based on four comparable sales, one of which is also in the Stonegate Farm subdivision (56 Woodcock Run, which sold for \$380,000 on June 1, 2011, 14 months after the assessment date) and three of which are in other parts of the Town. Mr. Rockwood considered all of his comparables to be in similarly "Good" neighborhoods and made no adjustments for location, an assumption not adequately supported by the evidence presented.

The board finds the Taxpayers failed to prove the value differences ascribed by the Town for different neighborhoods were either unreasonable or excessive. For example, the net difference between an "Average +30" neighborhood and an "Average+10" neighborhood is

about \$15,600, as reflected in the Town's sales analysis in Municipality Exhibit B. This analysis includes one sale in the same "Average+ 30" neighborhood (56 Woodcock Run, a sale also used in the Rockwood Appraisal) and two sales from other neighborhoods, one rated "Average+10" and one rated "Average." Adjusting Mr. Rockwood's sales grid for location differences would increase his estimate of value, bringing it more in line with the indicated value of the assessment of Lot 8.

Mr. Rockwood contended in his appraisal and in his testimony that a Stonegate Farm location no longer commands the \$75,000 "features" value shown on the ARCs and argued a lack of recent Stonegate Farm sales is supportive of his belief. The board does not agree and finds this contention is not credible since a lack of recent sales does not necessarily indicate a lack of value. For example, if no sales occurred on a lake in recent years, would an assessor then contend the waterfront "feature" contributed no value?

In fact, page 3 of the Rockwood Appraisal, shows substantial differences between listing prices for Stonegate Farm lots (three that average \$184,000, rounded) and two 2010 land sales in the Town [one for \$60,000 (5 acre lot) and one for \$40,000 (3.34 acre lot)]. Even adjusting for differences between listing and sale prices, the board finds this data, in and of itself, is somewhat supportive of the \$75,000 features value placed on Stonegate Farm lots.

The board is not unfamiliar with the assessing practice of placing features values on residential lots. In Ackerson Trust v. Thornton, BTLA Docket No. 24786-09PT (November 17, 2011), for example, the board found a \$50,000 features value assessed on residential condominium units did not result in disproportionality. That appeal involved a 10-unit condominium complex with 11.45 acres of land held in common by an association. Each unit owner had an undivided interest in the land held in common ownership with all its attendant

“amenities” and the board concluded the municipality used a “standard methodology” in valuing the rights associated with the commonly owned land.

The evidence presented in this appeal is that a homeowner’s association owns a total of 51.79 acres of Stonegate Farm “open space” land, separate and apart from the individual, approximately 5-acre lots owned by the Taxpayers and by others. The Town did not make a separate assessment of the property rights associated with this common land and captured their contributory value through the “features” value assigned to each lot in Stonegate Farm.

There is no question the Town followed the same methodology in placing a \$75,000 features value on each lot. In general, a consistent assessment methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The board considered the likely market value impact of proximity to the adjacent Timberdoodle Club. This exclusive, private hunting and fishing club is owned by the same individual (Randall Martin) who developed Stonegate Farm and common marketing of both Stonegate Farm and the Timberdoodle Club has occurred historically and to this day.

The Town presented Municipality Exhibit A, current pages from the club’s website, which describes the 15 Stonegate Farm lots (“carefully selected dream sites, each comprising over five acres”), notes the “balance of Stonegate Farm’s pristine grounds consist of conservation open space highlighted with stunning views, lush open meadows, ponds, and hardwood forest,” and then describes the separate amenities of the club, which has its own land for hunting and fishing and buildings and other improvements for its members.

Mr. Sullivan testified the ‘invitation only’ membership in the private Timberdoodle Club was separate from ownership of Stonegate Farm lots and the Taxpayers are not members of the

club. Non-membership, however, does not mean proximity and marketing linkage to the club does not have a positive impact on the market value of each lot.

For all of these reasons, the board finds the Taxpayers failed to meet their burden of disproportionality. The appeal is therefore 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

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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: Kenneth J. and Mary Ann Sullivan, 179 Stonegate Farm Road, Temple, NH 03084, Taxpayers; Chairman, Board of Selectmen, Town of Temple, PO Box 191, Temple, NH 03084; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 5/30/13

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Anne M. Stelmach, Clerk