

**Charles and Arlene Zaccaria**

**v.**

**Town of Bartlett**

**Docket No.: 26886-12PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2012 assessment of \$575,200 (land \$185,000; building \$390,200) on Map 2RT016/Lot 181G08, a single family home on 1.310 acres (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) when Cross Country Appraisal Group, LLC (“Cross Country”) performed its 2011 revaluation of the Town, it set the Property’s value at \$575,200, a \$66,800 increase from \$508,400;
- (2) upon questioning Cross Country, the Taxpayers were advised the Property’s land value was increased from \$126,500 to \$185,000 and, after a review of the Property, Cross Country subsequently revised the assessment to \$525,200 for tax year 2011 reducing the land assessment to \$135,000;
- (3) when the 2012 tax bill was received, the total assessed value reverted to \$575,200 with a land value of \$185,000;
- (4) the Taxpayers were advised by the Town the land value increased because Cross Country’s revised 2011 assessment did not properly take into account the contributory value of the Property’s view;
- (5) six properties located within the Property’s neighborhood and identified in Taxpayer Exhibit No. 1 have better views due to their higher elevation or location and also more acreage;
- (6) the view from the Property is not pristine as it looks at a road, wires and a pumping station; and
- (7) the land value should be abated to \$135,000 for a total assessment of \$525,200.

The Town argued the assessment was proper because:

- (1) the Town underwent a complete revaluation in tax year 2011 and values were set by Cross Country who no longer represents the Town;
- (2) upon inquiry from another taxpayer, the selectmen reviewed all the properties in the “Fallsview” development and determined the Property was underassessed in tax year 2011 in

comparison to properties with similar views on White Birch Lane (numbers 10, 12 and 14) and thus adjusted the assessment accordingly in tax year 2012;

(3) some properties may be at a higher elevation but that does not necessarily equate to a better view and at least one of the properties identified by the Taxpayers has land in current use;

(4) the Taxpayer failed to provide any substantive information regarding the list of the comparables they were referring to;

(5) the photographs and assessment-record cards submitted by the Town in Municipality Exhibit A support the consistent methodology applied to the assessments; and

(6) the appeal should be denied.

### **Board's Rulings**

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

To succeed on their tax abatement claim, the Taxpayers have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. This burden can be carried by establishing the Taxpayers' Property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 367-368 (2003). The Taxpayers did not present any credible evidence of the Property's market value. To carry their burden, the Taxpayers should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Taxpayers merely argued the assessment of the land was excessive in comparison to the assessments of other properties with similar, or even more expansive views. However, no evidence of value of the Property or any comparable properties with views was submitted to the board. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a Taxpayer's entire estate to determine if an abatement is warranted. See 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).

The Municipality must annually and in accordance with state assessing guidelines, review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town. RSA 75:8. See also RSA 73:1, RSA 73:10, RSA 74:1 and RSA 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, the Town must look at all relevant factors. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

The Town testified they revised the assessment on the Property as a result of a site visit and review of all of the properties in the Fallsview development. The Town submitted a tax map (Municipality Exhibit B), aerial photograph of the Fallsview development, a photograph of the view from the Property and assessment-record cards and photographs of views from 10 White Birch Lane, 12 White Birch Lane and 14 White Birch Lane. See Municipality Exhibit A. Upon

review of this documentation, the board finds the assessment on the Property is reasonable and finds the Town's evidence showed consistent methodology in assessing these properties. This testimony is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The Taxpayer asserted it was not a pristine view, but it has views of mountains, a river and a dam with a waterfall (Goodrich Falls). While the view from the Property is different in some respects from the views of neighboring properties, there is no evidence before the board that would allow it to find a potential buyer would not consider the Property's view as equally desirable.

This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). The board has done so in this appeal with the evidence and testimony submitted by the parties. Therefore, the board finds the Taxpayers failed to prove their assessment was disproportionately assessed and 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

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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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Michele E. LeBrun, Chair

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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: Charles and Arlene Zaccaria, P.O. Box 1017, Glen, NH 03838, Taxpayers; and Chairman, Board of Selectmen, Town of Bartlett, 56 Town Hall Road, Intervale, NH 03845.

Date: 7/22/15

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Anne M. Stelmach, Clerk