

**Wilfred A. Collins, Jr. and Lynn R. Collins**

**v.**

**Town of Newton**

**Docket No.: 27193-13PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2013 assessment of \$414,200 (land \$105,000; building \$309,200) on Map 9/Lot 3/15-9, a single family home on 2.241 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, represented by Mr. Wilfred A. Collins, Jr., one of the Taxpayers, argued the assessment was excessive because:

(1) the Property was purchased for \$317,000 in July, 2011;

- (2) in addition to the \$317,000 sale price, the Taxpayers “paid extra” for “a lot of interior work” including hardwood floors and countertops which cost “roughly” \$10,000;
- (3) the Flaherty property (Map 7/Lot 3/014-20), located approximately four to five miles from the Property at 21 George’s Way, is very similar to the Property and as depicted in the photographs and assessment-record cards in Taxpayer Exhibit No. 2 is assessed for \$375,300 which supports the Taxpayers’ disproportional assessment;
- (4) if the Property was sold in April, 2013, the Taxpayers could not get “anywhere near” the assessed value and estimating its market value would be a “guess” on their part as it is a “gray area”; and
- (5) the Taxpayers are looking for fairness and equity.

The Town argued the assessment was proper because:

- (1) the Town was revalued in 2010 using sales that occurred from April 1, 2008 to April 1, 2010;
- (2) a review of the homes in the Nordic Woods neighborhood (Municipality Exhibit A, Tab “Neighborhood”) supports the consistency in the assessments;
- (3) the majority of the homes in the Property’s neighborhood (“Nordic Woods”) were built by the same builder in the 2006 to 2012 time frame, and all are assessed as having an “average +20” quality rating;
- (4) the homes differ in size and other features, such as age, additions, walk-outs, garages/basement garages;
- (5) a review of building permits taken out on the Property and the land use change tax (“LUCT”) assessed (Municipality Exhibit A, Tab “Cost”) shows the builder expended in the

range of \$308,000 to build the Property which indicates the \$317,000 sale price paid by the Taxpayers in 2011 does not reflect the Property's market value;

(6) the Nordic Woods neighborhood is a better location than the George's Way neighborhood and it is located next to a "mixed bag" of properties and its location near the railroad affects property values in that neighborhood (see Municipality Exhibit A, Tab "Maps"); and

(7) Nordic Woods is one of the nicest neighborhoods in the Town and the evidence submitted supports the assessment on the Property.

The parties stipulated the level of assessment in the Town was 107.5%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

In determining the proportionality of an assessment, the board applies its "experience, technical competence and specialized knowledge" to the evidence presented. See RSA 71-B:1; and 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 has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). Further, in making findings where there is conflicting evidence, "judgment is the touchstone." See Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras, 115 N.H. at 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Taxpayer testified the Property was purchased for \$317,000 in July, 2011. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. The board has the discretion to evaluate and determine the credibility of the sale price being indicative of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length transaction, the sale price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). In this case, the board finds the sale price is not reflective of its market value as of April 1, 2013 based on several factors: 1) the Taxpayers noted they paid "extra" for "a lot of interior work" including wood flooring and countertops totaling approximately \$10,000; 2) the building permits taken out on the Property and the LUCT paid by the builder reflect total out of pocket costs that are not in line with the purchase price; and 3) the Town's 2010 revaluation and evidence of its methodology specifically in the Nordic Woods neighborhood support a value in excess of the sale price.

"In an abatement case, the Taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town." Appeal of Sokolow, 137 N.H. 642, 643 (1993). The Taxpayers stated they did not know what the market value of the Property was as of April, 2013 and only provided one "comparable" sale (Flaherty) as their "proof" the Property was disproportionately assessed. 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).

As stated above, the Town provided significant evidence of the assessment of the properties located in the Nordic Woods neighborhood including the differences between those properties and the Property as well as photographs for the board to review. 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).

Although the right to an abatement and the board's powers in these proceedings are dictated by statute, the statutory authority contained in RSA 76:16-a to "make such order thereon as justice requires" confers broad discretion and equitable powers to abate taxes. Cf. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In this appeal, the board finds the Taxpayers did not carry this burden of proof and the totality of the evidence supports the proportionality of the Taxpayers' assessment. Therefore, 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

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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: Wilfred A. Collins, Jr. and Lynn R. Collins, 8 Nordic Wood Lane, Newton, NH 03858, Taxpayers; and Chairman, Board of Selectmen, Town of Newton, PO Box 378, Newton, NH 03858.

Date: 8/19/15

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Anne M. Stelmach, Clerk