

**Kevin McGettigan**

**v.**

**Town of Effingham**

**Docket No.: 27247-13PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2013 assessment of \$176,600 (land \$34,000; building \$142,600) on Map 407/Lot 11, 98 Riverwood Circle, a single-family home on 2.22 acres (the “Property”). For the reasons stated below, the appeal for abatement 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 was excessive because:

(1) he purchased the Property for \$82,800 in April, 2013 in an arm’s-length transaction;

(2) although purchased from a financial institution after foreclosure, the \$82,800 sale price is a good indication of the Property's market value as of the April 1, 2013 date of assessment due to the amount of work required to make the Property habitable;

(3) an appraisal report prepared by William C. Buttermark (the "Buttermark Appraisal," Taxpayer Exhibit No. 1, Tab 7) estimated the Property had a market value of \$112,000 as of April 18, 2013;

(4) the Property is located in a neighborhood with a "defunct" homeowner's association which negatively impacts its market value as most forms of financing are not available and this argument is supported by evidence of another house in the neighborhood that was marketed extensively but did not sell; and

(5) the assessment should be abated based on a market value of \$82,700.

The Town, represented by Chad Roberge with Avitar Associates of New England, Inc., argued the assessment was proper because:

(1) the April, 2013 sale price of \$82,800 is not "arm's-length" as it was purchased from a financial institution after it was foreclosed on and because the seller reduced the asking price from \$140,000 to \$84,900 in a very short amount of time;

(2) after inspecting the Property in February, 2015, the assessment was abated from \$233,600 to \$176,600 to account for the Property's physical condition and issues related to the homeowner's association;

(3) the sales utilized in the Buttermark Appraisal are not appropriate comparable sales and Comparable No. 1 had been vacated by the seller, Comparable No. 2 was a bank re-sale and therefore is "unqualified" and Comparable No. 3 is a colonial style home and is a completely different market than the Property;

(4) a sales analysis prepared by the Town (Municipality Exhibit A) utilizing only the sales of ranch style residences arrives at a range of market value indications for the Property from \$150,233 to \$165,458 which generally supports the proportionality of the equalized assessment; and

(5) the abated assessed value of \$176,600 is proportional and any further abatement should be denied.

The parties agreed the level of assessment in the Town for 2013 was 109.9%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$123,100 based on a market value finding of \$112,000 adjusted by the level of assessment (\$112,000 X 109.9%, rounded).

As prescribed in RSA 75:1, ad valorem assessments must be based on market value. Proportionality is determined by arriving at a reasonable estimate of market value adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).); see also Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). In order to prevail in this appeal, the Taxpayer had the burden of proving the market value of the Property in 2013 was less than approximately \$160,700 (\$176,600 divided by the 109.9% level of assessment).

As a specialized tribunal, the board has de novo appellate authority to review all the evidence submitted. 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).

The Property is a three bedroom, three bathroom ranch-style residence on a 2.22 acre lot. The Property was foreclosed on in July, 2012 and the Taxpayer testified the prior owners vacated it sometime in 2011. Prior to the April, 2013 purchase by the Taxpayer, the Property was damaged and required a substantial amount of work to make the residence habitable; including plumbing repairs and replacement, installation of a new well pump, hot water tank and wall furnace, replacement of sills in kitchen, repair of leaking skylights, reframing of front of garage and installation of garage doors and removal of large deck. “Total cost to cure to make the property habitable and weather tight without any cosmetic repairs placed at \$25,200.” See Buttermark Appraisal, Addendum p. 2 of 4.

The Property is located in a small residential neighborhood and on a privately owned road. When constructed, the road was maintained by a homeowner’s association; however, the Taxpayer testified the association is “defunct” and portions of the road are maintained by individual residents, while other portions remain unplowed and unpassable during winter

months. As a result, the defunct association “effects the marketability of the properties in the association as they are ineligible for mortgage financing. This is severely adverse to marketability.” Id., p. 1 of 6. The Taxpayer testified he purchased the Property for cash and was able to purchase it as he did not require financing; he further testified that another house in the association (48 Riverwood Circle) was marketed for sale for a period of time but did not sell due to the lack of financing options. See Taxpayer Exhibit No. 1, Tab 8.

In order to satisfy his burden, the Taxpayer relied upon the April, 2013 sale price of the Property. He argued the sale was an arm’s-length transaction and the Property had been marketed for sale for an extensive period of time from 2009 (with an original asking price of \$239,900) until it eventually sold in 2013 (for \$82,800). Id., Tab 1. The Town argued the sale price was not reflective of the Property’s market value as it was sold by a financial institution after a foreclosure. The board concurs.

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 appeal, the board finds the sale price of \$82,800 is entitled to some weight but is not conclusive evidence of the Property’s market value. In the board’s experience, a financial institution may make a business decision to aggressively market a property in order to sell it quickly in order to minimize carrying costs rather than maximize its final sale price.

In addition to the sale price, the Taxpayer submitted the Buttermark Appraisal which concluded the Property had a market value of \$112,000 utilizing three comparable sales: 112

Riverwood Circle, 40 Henry Drive and 93 Henry Drive. Mr. Buttermark found the Property to be in “fair” condition and adjusted the comparable sales for various physical differences, renovation/repair costs to make the Property “habitable and weather tight” (\$25,000)” and adjusted the two comparable sales on Henry Drive for location as the association issues negatively impacted the market value of the Property by \$8,000.

For its part, the Town submitted a sales analysis which also used three comparable sales and arrived at a range of “Adjusted Sale Prices” from \$150,233 to \$165,458. See Municipality Exhibit A. The Town also made various adjustments for physical characteristics, but determined the Property would be in “Average” condition after the “Damaged Area” was repaired; however, two of the Town’s comparable sales were in “Good” condition, but did not make any downward adjustment for the Property’s “Average” condition. The Town did make an adjustment for “Assoc Issues” of \$4,500.

While mindful of the Town’s concerns regarding the selection of comparable sales, and using its judgment and experience, and reviewing the evidence as a whole, the board finds the Property had a market value of \$112,000 as of the April 1, 2013 assessment date. The board finds the description of the Property in the Buttermark Appraisal more accurately depicts the condition of the Property than the Town’s sales analysis, and this finding is further supported by the extensive testimony of the Taxpayer (a licensed contractor), and the photographs submitted in Taxpayer Exhibit 1, Tab 6. The photographs provide convincing evidence the Town overstated its condition, even after the expenditure of \$25,000 which will only make the Property “habitable” and “weather tight.” Additionally, the board finds the Town’s sales analysis understated the impact the lack of financing options had on the market value of the Property.

For all these reasons, the board finds the proper assessment to be \$123,100, based on a market value finding of \$112,000 adjusted by the level of assessment. Therefore, the appeal is granted.

If the taxes have been paid, the amount paid on the value in excess of \$123,100 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 assessment 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, 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: Kevin McGettigan, 98 Riverwood Circle, Effingham, NH 03882, Taxpayer; Chairman, Board of Selectmen, Town of Effingham, 68 School Street, Effingham, NH 03882-8104; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 10/29/15

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Anne M. Stelmach, Clerk