

**Gustave and Irene Ruth and Melissa Boucher**

**v.**

**Town of Winchester**

**Docket No.: 27292-13PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2013 assessment of \$128,400 (land \$39,800; building \$88,600) on Map 37/Lot 4-1, 29 Coombs Bridge Road, a single family home on 1.080 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) the Taxpayers became aware the Property was for sale shortly after it was listed for \$98,000 and the parties agreed upon a sale price of \$93,533 in August, 2013;

(2) the Property needed a new water treatment system at a cost of \$4,000 and the bathtub, toilet and kitchen sink needed replacement because they were stained from minerals;

(3) the Property is located around the corner from the race track which affects its value;

(4) the assessment is excessive based on a comparison of sold properties in the Town during 2011 and 2012 and a sampling of “asking prices vs. assessments” for properties offered for sale as of December 2014 (see Taxpayer Exhibit No.: 1 at Tab A) and four comparable sales (see Taxpayer Exhibit No.: 2); and

(5) therefore, the assessment should be abated to \$95,300.

The Town argued the assessment was proper because:

(1) the purchase price of the Property was below its market value as the selling parties were divorcing and it was only on the market for ten (10) days which is less than typical;

(2) five comparable properties were analyzed which support the assessment is proportionate;

(3) the Taxpayers’ comparables are not indicative of the market value of the Property as they consisted of a bank sale subsequent to foreclosure (260 Old Westport Road), a double-wide manufactured home (403 Warwick Road), a sale four years prior to the date of assessment (16 Rabbit Hollow Road) and a sale two years prior to the date of assessment of a much smaller and older home (6 Durkee Street); and

(4) the Taxpayers have not carried their burden to show the Property was disproportionately assessed and the appeal should be denied.

The parties agreed the level of assessment was 111.2% for the 2013 tax year, as calculated by the department of revenue administration.

Upon deliberation at the conclusion of the hearing, the board directed its RSA 71-B:14 review appraiser to investigate the comparable sales presented by the parties and to issue a

written report of her findings. Cynthia L. Brown completed this investigation and reported to the board on September 14, 2015 (the “Brown Report”), copying the parties. The parties were given ten (10) days, if they wished, to file a response to the Brown Report. No response was received from either party.

### **Board’s Rulings**

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

“In an abatement case, the taxpayers have 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). This burden can be carried by establishing that 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, 368 (2003).

The Taxpayers testified the Property’s purchase price was \$93,533 on August 16, 2013. 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). In this case, the board finds the price paid for the Property was not indicative of its market value. As the evidence showed, the Property was originally built by the Monadnock Habitat for Humanity, had only been on the market for ten (10) days before it went under contract, was sold pursuant to a decree of divorce and was a cash purchase. For these reasons, the board finds the price paid for the Property is not reflective of its market value.

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). The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Further, 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). Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions).

The Taxpayers submitted four comparable sales (Taxpayer Exhibit No.: 2) and "averaged" the prices paid for the sales as well as the Property's purchase price to support their contention the average price was 25.8% less than the "taxable values of the five parcels." Averaging sales, as done by the Taxpayer, is not a conclusive method of establishing market value since averaging ignores the unique characteristics of properties. Rather, analyzing, comparing, and weighing sales data and then correlating the most pertinent aspects of the sales to the Property arrives at the best indication of market value. Both the Town's testimony and the Brown Report support the sales utilized by the Taxpayers are not comparable to the Property.

Thus, the board finds they are not sufficient to carry the Taxpayers burden of proving that the Property is disproportionately assessed.

Therefore, based on all of the evidence submitted, the board finds the Taxpayers have not carried their burden. Additionally, the board finds the sales' analysis submitted by the Town provides some support for the proportionality of the assessment. (See Municipality Exhibit A.) For all these reasons, 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

---

Michele E. LeBrun, Chair

---

Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Gustave and Irene Ruth, 130 Watson Road, Winchester, NH 03470 and Melissa Boucher, 29 Coombs Bridge Road, Winchester, NH 03470, Taxpayers; 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: 10/28/15

---

Anne M. Stelmach, Clerk