

**Norma and Gustav Garceau**

**v.**

**Town of Rye**

**Docket No.: 24217-08PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 ad valorem assessment of \$430,100 (land \$195,200; building \$234,900) on Map 025/Lot 008, 321 Pioneer Road, a single family home on 0.46 acres, with an additional 2.3 acres in current use<sup>1</sup> (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.

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<sup>1</sup> The Town applied a current use assessment of \$15 per acre to 2.3 acres in current use.

The Taxpayers argued the assessment was excessive because:

- (1) part of the Property (0.02 acres) was deeded to the State of New Hampshire at a price (\$5.16 per square foot) derived in an appraisal dated March 6, 2008 (Taxpayer Exhibit No. 1) presented to the Town to support an abatement (Taxpayer Exhibit No. 2);
- (2) the State's appraiser analyzed 20 land sales and used the sales comparison approach to estimate market value;
- (3) most of the Property is unproductive wetland that is not developable and was placed in current use;
- (4) the Town did not prepare an appraisal or statistical report to defend the assessment;
- (5) the building assessment (\$234,900) is not disputed; and
- (6) the total assessment should be abated using a much lower land value (based on \$5.16 per square foot for the 0.46 acres not in current use).

The Town argued the assessment was proper because:

- (1) the Taxpayers' abatement request went to the Town selectmen twice and they denied the request;
- (2) while the effective date of the State's appraisal (Taxpayer Exhibit No. 1) was March 6, 2008, this appraisal is dated June 16, 2008, more than two months after the assessment date;
- (3) \$5.16 per square foot is not an estimate based on the value of the Property as a whole, but only a means of estimating compensation for the small part of the land taken by the State;
- (4) in fact, the State's appraisal estimated the market value of the land portion of the Property to be \$625,000 before and after the taking, which is a value that indicates the Town's assessment is, if anything, low;

(5) the Town does not agree with the value derived in the State's appraisal which is based on properties that are not comparable; and

(6) the appeal should be denied.

At the hearing, the board stated it would use the median ratio calculated by the department of revenue administration (100.1%) to represent the level of assessment in the Town for tax year 2008 and neither party objected.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving the assessment was disproportional. The appeal is therefore denied for the reasons briefly stated below.

Assessments must be based on market value adjusted by the level of assessment in the Town. See RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In order to prevail in a tax abatement appeal, the Taxpayers have the burden of proving the market value of the Property as of the assessment date was less than the assessed value adjusted by the level of assessment in the Town (100.1%). The board has the discretion to evaluate and determine whether any piece of evidence, such as an appraisal or sale prices of other properties, is indicative of market value. Cf., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980).

In addition, even if a taxpayer wishes to challenge only one component of the assessment, such as the land value, he or she 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. See, e.g., Appeal of Walsh, 156 N.H. 347, 356 (2007); citing Appeal of Sunapee, 126 N.H. 214, 217 (1985) and other cases.

In this appeal, the Taxpayers presented no evidence to establish the market value of the Property as a whole, which consists of 2.76 acres, a ranch-style dwelling (with almost 2,500 feet of effective living area), a garage and a dock. The board finds, if anything, the evidence presented supports the Town's assessment. For example, the State appraisal (Taxpayer Exhibit No. 1) estimated the value of the land only (2.76 acres) at \$625,000 before and after the taking. This would imply a market value of approximately \$850,000 in total when the contributory value of the improvements is added. (The Taxpayers did not dispute the Town's assessment on these improvements.) The \$850,000 indicated market value is roughly twice the Town's ad valorem assessment.

The board considered the Taxpayers' arguments but finds them to be without merit. They simply do not provide any basis for concluding the assessment on the Property was disproportional.

For all of 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

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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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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Norma and Gustav Garceau, 321 Pioneer Road, Rye, NH 03870, Taxpayers; and Chairman, Board of Selectmen, Town of Rye, 10 Central Road, Rye, NH 03870.

Date: 12/9/10

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Anne M. Stelmach, Clerk