

**Patrick F. and Karen G. Walsh**

**v.**

**Town of North Hampton**

**Docket No.: 24314-08PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$3,899,000 (land \$2,386,300; building \$1,512,700) on Map 5/Lot 2, 25 Willow Avenue, a 1.43 acre lot with a colonial style home and a cottage (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 Property, located in “Little Boar’s Head,” was assessed for \$3,384,400 in tax year 2006

and abated to \$2,727,800 by agreement with the Town for tax years 2006 and 2007 (see

Taxpayer Exhibit No. 1);

(2) in tax year 2008, however, the Town assessed the Property at \$3,899,000, increasing the land

value by \$1,170,800 while lowering the building value (by \$150,800) as stated in the

“Memorandum” (Tab 1 of Taxpayer Exhibit No.1);

(3) the Property is subject to a light and air easement over a parcel of land on the ocean side

which could be obstructed by the adjoining owner if not maintained;

(4) the Town’s assessor acknowledged property values generally declined between 2006 and

2008; and

(5) the assessment should be abated to \$2,455,020 (calculated in the Memorandum by using the

abated 2006 assessed value “reduced by ten percent, attributable to the deterioration of market

value between 2006 and 2008”).

The Town argued the assessment was proper because:

(1) market conditions changed between 2006 and 2008 and the Town performed a revaluation for tax year 2008 by Vision Appraisal Company (“Vision”);

(2) in 2006, the level of assessment was 79.6% and the abated assessment in that tax year is reflective of a market value of over \$3,400,000 for the Property;

(3) as shown on the assessment-record card, the Property was purchased by the Taxpayers in 2004 for \$3.4 million at a time when the market was continuing to increase;

(4) Vision determined, based on market data, neighborhood and other factors, that land values should be adjusted higher in the vicinity of the Property (“Neighborhood 9A” -- Willow Avenue and Ocean Boulevard);

(5) the land sales in Municipality Exhibit A support the assessment of the Property and, in particular, the assessment on the land;

(6) properties do not appreciate or depreciate at the same rate throughout the Town;  
and

(7) the appeal should be dismissed because the Taxpayers have failed to prove disproportionality for the reasons stated in the Town’s oral motion to dismiss made at the close of the Taxpayers’ presentation.

The parties agreed the level of assessment was 97.1% in tax year 2008, the median ratio calculated by the department of revenue administration (“DRA”).

### **Board’s Rulings**

The board deferred ruling on the Town’s motion to dismiss presented orally at the conclusion of the Taxpayers’ presentation. In light of the additional relevant evidence presented by the Town on the issue of proportionality, the board finds it is more reasonable to consider the evidence as a whole and decide the appeal on the merits rather than grant the Town’s motion to dismiss. Based on the evidence, the board finds the Taxpayers failed to carry their burden to prove disproportionality and thus the appeal is denied.

Assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (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 (97.1%). The

board has the discretion to evaluate and determine whether any piece of evidence 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 lieu of an appraisal or any other admissible market value evidence, the Taxpayers place great emphasis on a “settlement” reached with the Town reducing their assessments for tax years 2006 and 2007, the two years prior to the year of this appeal (2008), when a Town-wide revaluation was performed. They argue the Town improperly increased the value of the land and the 2008 assessment should be reduced to the 2006 assessment less ten percent. (See Memorandum, p. 5.) The board disagrees because any such agreement for prior years has no applicability at all to tax year 2008 when the Town performed the revaluation and reassessed properties throughout the Town. Even if the Taxpayers had filed appeals in the prior years, which they did not do, and even if they had filed a written settlement agreement pertaining to those tax years, which they did not do, the Town was not precluded from reassessing the Property in tax year 2008. Even when the board has ordered abatements in duly filed appeals for prior tax years, the “subsequent year” statute, RSA 76:17-c, does not apply as a constraint on the Town’s ability to reassess the Property in 2008 as part of a “general reassessment in the municipality.”

While the Taxpayers main focus is on the land assessment, the Taxpayers have the burden of proving the aggregate value of their Property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement. See Appeal of Walsh, 156 N.H. 347, 356 (2007). As stipulated by the parties, the median level of assessment as calculated by the DRA in tax year 2008 was 97.1%. The 2006 (the year of the settlement) median level of assessment as calculated by the DRA was 79.6%. Equalizing the stated settlement value of

\$2,727,800 by the 2006 DRA ratio of 79.6% indicates an estimated market value of \$3,427,000. Equalizing the \$3,899,000 assessment under appeal by the DRA ratio of 97.1% indicates an estimated market value of \$4,015,500. Thus, the total increase in equalized (market) value from the 2006 assessment to the 2008 reassessment is \$588,500, not \$1,171,200 as stated by the Taxpayers. (See Memorandum, p. 2.) In any event, this exercise does not prove the Property is disproportionately assessed because increases from past assessments are not evidence a Taxpayer's property is disproportionately assessed compared to other properties in general in the taxing district in a given year. See Appeal of Town of Sunapee, 126 N.H. 214 (1985) (the board must consider a Taxpayer's entire estate to determine if an abatement is warranted).

In order to prove the Property is disproportionately assessed, the Taxpayers have the burden of proving the Property's aggregate value as a whole (i.e., as land and buildings together) is disproportional, because that is how the market views value, and thus the total assessment is excessive. See Walsh, 156 N.H. at 356; and Sunapee, 126 N.H. at 217. The Taxpayers submitted four sales of properties (4 Atlantic Avenue in North Hampton, 34A Ocean Boulevard in North Hampton, 1413 Ocean Boulevard in Rye, and 152 Harbor Road in Rye) to argue the land assessment was excessive. They argued comparing the sale price while utilizing the Town's land assessment of each of the comparables supported their assertion the Property's land was overassessed.

This argument is flawed for several reasons. First, as indicated above, the market does not view land and buildings separately in determining a sale price; second, there was no evidence submitted to show the land assessment on each of the sales was proper; and third, there was no analysis of the sales to the Property to support the assertion the market value of the Property was disproportionate to the sale properties. Further, there was no evidence to suggest whether or not

the sales located in Rye should be adjusted for location. In short, an argument that the land as assessed compared to the sale price of a “comparable” supports the overall assessment of the Property is not probative evidence of overassessment.

The Town submitted photographs of the Property and its view, along with three comparable properties located on Willow Avenue and Ocean Boulevard. Of the three comparables, one (Ocean Boulevard, Map 1, Lot 134) sold in 2006 for \$2,500,000 and is currently listed for sale for \$3,400,000 and two (14/20 Willow Avenue and 19 Willow Avenue) sold in 2011. According to the Town, the 14/20 Willow Avenue property has an inferior view and thus the land assessment was adjusted accordingly. The board finds these comparables were assessed with the same methodology used in assessing the Property. This is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayers further argued the Property is the beneficiary of a “light and air easement” over a parcel of land on the ocean side which is currently devoted to a well maintained, expansive lawn by the abutting owner, but indicated the Property may have some decrease in value because they have no control over this easement. The board concurs with the Town that so long as the Property has an unobstructed view of the ocean (as supported by the photographs in Municipality Exhibit A), no diminution in the value of the Property has occurred and the easement provides legal protection for a valuable property right.

For all of these reasons, the appeal for a tax abatement 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, Member

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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: Thomas M. Keane, Esq., Keane & MacDonald, 1000 Market Street - Suite 202, PO Box 477, Portsmouth, NH 03802-0477, counsel for the Taxpayers; Chairman, Board of Selectmen, Town of North Hampton, PO Box 710, North Hampton, NH 03862; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: 7/13/11

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Anne M. Stelmach, Clerk