

**Daniel J. Cahalane**

**v.**

**Town of Rye**

**Docket No.: 26893-12PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2012 assessment of \$437,000 (land \$386,400; improvements \$50,600) on Map 84/Lot 62, 15 Breakers Road, a residential camp on 0.11 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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 failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) Portsmouth-Herald articles indicate one of the Selectmen believed the values set by the Town’s assessing contractor in 2012 were “out of whack” and this is borne out by the evidence

presented in this appeal and two other tax appeals (described below) in the August 20, 2014 consolidated hearing;

(2) for the reasons stated in Taxpayer Exhibit No. 1, the 2012 assessment should be abated to \$356,000 (based upon a reduced land assessment of \$305,400 because there is no dispute regarding the value of the improvements);

(3) the Taxpayer has owned the Property since August, 1997 when it was purchased for \$120,000 with his brother-in-law and the \$356,000 value is supported by the fact the Taxpayer purchased that party's half-interest in September, 2009 for \$178,000 after negotiations to determine a "fair price";

(4) the \$356,000 market value is also supported by an appraisal obtained for financing in October, 2012 which estimates this same value;

(5) the sale and assessment comparables detailed in Taxpayer Exhibit No. 1, some of which are closer to the ocean and all of which are larger than the Property, also demonstrate the disproportionality of the assessment; and

(6) the assessment should be abated based on a market value of \$356,000.

The Town argued the assessment was proper because:

(1) the Town employed "KRT Appraisal" to perform a statistical update in tax year 2012;

(2) as stated in the Town's August 6, 2014 Motion to Dismiss, when the Town later discovered discrepancies in certain neighborhood designations for tax year 2012, it made adjustments to correct assessed values for tax year 2013 for other properties [as reflected in the site adjustments map and assessment-record cards ("ARCs") submitted with the motion] but did not find any error in the Property's assessment that required correction; and

(3) because the Taxpayer is not "aggrieved," the appeal should be dismissed.

The parties did not dispute the level of assessment in the Town in tax year 2012 was 95.7%, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence and arguments presented, the board finds the Taxpayer failed to meet the burden of proving the Property was disproportionately assessed in tax year 2012. The appeal is therefore denied.

The board consolidated the hearing of this appeal with two other 2012 tax appeals involving properties in the same neighborhood<sup>1</sup> raising very similar challenges to the Town's assessments in that year and the board is issuing a separate Decision in each appeal. The board first heard arguments regarding the Town's Motion to Dismiss filed only two weeks before the scheduled hearing. That motion is denied.

Determining whether the Taxpayer is "aggrieved" by the 2012 assessment requires inquiry into the evidence to be presented at the hearing regarding whether the Property was disproportionately assessed in that year, not necessarily on whether the Town made corrections to other property values in the next tax year (2013) based on a revised land valuation model for certain properties. Granting the Town's motion would have deprived the Taxpayer of the opportunity of presenting any evidence of disproportionality in 2012. The board therefore proceeded to the scheduled hearing on the merits after denying the motion.

To prove disproportionality and obtain a tax abatement, the fundamental focus must be on the market value of the Property as of the assessment date adjusted by the level of assessment in the Town. See RSA 75:1 and, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803

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<sup>1</sup> Those properties are: 31 Breakers Road, Map 84, Lot 58 in Dietz-Tuttle v. Town of Rye, BTLA Docket No. 26888-12PT; and 50 Jenness Avenue, Map 84, Lot 57-1 in Tuttle v. Town of Rye, BTLA Docket No. 26889-12PT.

(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).

Consequently, the Taxpayer had the burden of proving the market value of the Property as of April 1, 2012 was materially less than the equalized value of the assessment: \$456,600, rounded (\$437,000 total assessment divided by 95.7% level of assessment). The board finds there is insufficient evidence to support a finding of disproportionality in this appeal.

The Taxpayer's appeal document references several sales, including 37 Gray Court, which sold for \$355,000 in July, 2012 and 61 Parsons Court, which sold for \$350,000 in January, 2012, in support of his arguments that the Property was disproportionally assessed in 2012. Both 37 Gray Court and 61 Parsons Road appear to have been "cash" sales. Generally speaking, it is likely that a property will command a lower price if sold for "cash" rather than with the typical financing contingencies since a cash sale poses less risk for the seller. 37 Gray Court was on the market for a very short time (nine days) prior to sale and Ms. Walker states in her appraisal (p. 13) that it "was sold as a rehab or tear down."

These sales and two others are mentioned in the "Walker Appraisal" included with his appeal document and in Taxpayer Exhibit No. 1. The Walker Appraisal, prepared by Susan Walker of SDW Appraisal, estimates a value, as of October 9, 2012, of \$356,000 but she states this appraisal was prepared "for lending purposes only" for her client ("Metro Credit Union") rather than as an appraisal prepared for the purpose of property tax valuation. Her estimate is exactly equal to the value negotiated between the Taxpayer and his brother in 2009 and may have been used to obtain financing to fund the buy-out of the brother's one-half interest in the Property. As shown on the ARC, the Town treated the transfer of that interest as "unqualified" because sales between related parties are not considered valid, arm's-length transactions.

The major adjustment made by Ms. Walker in her appraisal was for location: she considered the Property to be in a better location than three of her comparables and adjusted them upwards by five to eight percent. The board finds she provides no adequate support or explanation of how she determined the relatively nominal adjustment for this important factor. All other things being equal, applying a higher location adjustment would have increased Ms. Walker's estimate of value. This is but one example of many questions raised by the Walker Appraisal and why undue reliance on its value estimate is not warranted.

Ms. Walker states in her appraisal that she performed a prior appraisal of the Property "on 6/23/10." (See "Page #11" of the Walker Appraisal.) There is no further information given about this prior appraisal and the Taxpayer did not mention it in his presentation. It is not known whether Ms. Walker used different sale comparables in her earlier appraisal, made different adjustments to the sales for differences with the Property or arrived at a different market value estimate (perhaps higher than the estimate in the Walker appraisal). Ms. Walker did not attend the hearing and therefore was not available to answer questions about her prior appraisal or her methodology, adjustments and choice of comparable sales in the Walker Appraisal.

The board considered all of the sale and assessment information presented by the Taxpayer (as well as the other two taxpayers who attended the consolidated hearing), but is unable to find they indicate the Property was disproportionately assessed in tax year 2012. The Property has a desirable location reasonably close to the ocean, but is not waterfront and does not have an "ocean view." It is within the Town's "Coastal Overlay District" (or "COD"). From the photographs in the Walker Appraisal, it is apparent the Property is attractive and well-maintained.

The Taxpayer questions the proportionality only of the \$386,400 assessed value attributed to the land in tax year 2012 and neither the Taxpayer nor the Town disputes the proportionality of the remaining component of the assessment (\$50,600 for the improvements). Assessments, however, must be considered as a whole, rather than by individual component. See, e.g., Appeal of Walsh, 156 N.H. 347, 356 (2007) (even if a taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, the Taxpayer 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).

The assessed value of the land represents a very large portion (over 88%) of the total assessment. This component of the assessment increased substantially from 2011 (from \$271,700 to \$386,400, over 42%) by reason of the statistical update (revaluation) performed in that year. This fact alone is also not probative of disproportionality because unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. See also Appeal of Town of Sunapee, 126 N.H. 214 (1985). The board heard evidence from the Town that other properties in proximity to the Property had their land assessments adjusted upwards in 2013, an indication that properties on or near the ocean had been underassessed to some extent. For these reasons, the board can give no weight to the fact the Property's assessment increased from the year prior to the 2012 revaluation.

The Taxpayer compared the land assessment on the Property to other land assessments in 2012, which the Town subsequently corrected. Again, the fact certain other properties may have been underassessed in tax year 2012 is not, in and of itself, a proper ground for a tax abatement on the Property in that year. See Appeal of Cannata, 129 N.H. 399, 401 (1987) (the

underassessment of other properties does not prove the overassessment of the property under appeal). The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id.

The board also reviewed the Town's evidence, including the neighborhood delineation map and ARCs submitted with the motion to dismiss. The sales data included in these ARCs is generally supportive of the finding the Property was not disproportionately assessed.

For all of these reasons, the board finds the Taxpayer failed to meet the burden of proving the Property was disproportionately assessed in tax year 2012. The appeal is therefore 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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Albert F. Shamash, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Daniel J. Cahalane, 49 Bridle Pass, N. Andover, MA 01845, Taxpayer; Chairman, Board of Selectmen, Town of Rye, 10 Central Road, Rye, NH 03870; and KRT Appraisal, 191 Merrimack Street, Haverhill, MA 01830, Contracted Assessing Firm.

Date: October 10, 2014

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Anne M. Stelmach, Clerk