

**Bellamy Rental Properties of NH, LLC**

**v.**

**Town of Madbury**

**Docket No.: 27169-13PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2013 assessment of \$308,700 (land \$127,900; building \$180,800) on Map 8/Lot 28, 153 Madbury Road, a duplex on 3.26 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 satisfied this burden of proving disproportionality.

The Taxpayer, represented by Eric Parker (its “owner”), argued the assessment was excessive because:

- (1) the Property is a duplex (with each unit having three bedrooms and one bathroom) and was purchased as an “income” property in December, 2013 (after taking into account its potential rental revenue and all anticipated costs and expenses, including property taxes);
- (2) as of the April 1, 2013 assessment date, the Property suffered from fire (smoke) damage which required extensive repairs to both units in order to make them rentable and the Town’s assessment fails to reflect the actual cost of repairs for the fire damage (approximately \$65,000 in total, including \$15,000-\$20,000 in “out of pocket” costs);
- (3) this work was performed after purchase of the Property in December, 2013 (and before the subsequent April 1, 2014 assessment date);
- (4) an appraisal prepared by Lorraine R. Mattimore of North Star Appraisers, LLC (the “North Star Appraisal,” included as part of Taxpayer Exhibit No. 1) estimates the Property had a market value of \$228,000 as of March 10, 2014 (after the work was completed and the units were rentable); and
- (5) the assessment on the Property should be abated accordingly.

The Town argued the assessment was proper because:

- (1) as noted on the assessment-record card (the “ARC,” Municipality Exhibit A), the Town recognized the “fire” damage in the 2013 assessment and applied a 10% depreciation factor to the building for this condition (effectively, \$21,527 deduction from the assessed value);
- (2) the Taxpayer’s North Star Appraisal does not make proper adjustments to several sales which are not reasonably comparable to the Property, either because they are manufactured (‘double-

wide') homes with basement rental units or older single family homes converted into duplexes,<sup>1</sup> and its gross rental multiplier ("GRM") calculation is not credible because it is actually based on only one sale; and

(3) the appeal should be denied.

The parties agreed the level of assessment in the Town was 109.4% in tax year 2013, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence presented, the board finds the Taxpayer met its burden of proving the Property was disproportionally assessed in 2013 and this appeal is therefore granted. Using its judgment and experience, the board finds the assessment on the Property should be abated to \$265,700 in tax year 2013 for the following reasons.

In determining the proportionality of an assessment, the board applies its "experience, technical competence and specialized knowledge" to the evidence presented. See RSA 71-B:1; and 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 has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). Further, in making findings where there is conflicting evidence, "judgment is the touchstone." See Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras, 115 N.H. at 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

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<sup>1</sup> See also Municipality Exhibit B, which provides additional details regarding one of the comparables used by this appraiser, 60 Edgewood Road in Durham: according to the listing sheet, this property is not approved ('recognized') as a duplex by the municipality but could be rented as a "single family home with accessory apartment."

In the appeal document, filed on June 9, 2014, the Taxpayer estimated the Property had a market value of “\$240,000” based on “three recent sales” with an upward adjustment (“\$20,000”) due to the fact the Property was on a “larger lot” than these comparables. At the hearing, the Taxpayer presented and emphasized the North Star Appraisal, which estimates a market value of \$228,000 as of March 10, 2014, to support the claim the Property was overassessed.

Weighing the evidence as a whole, including the detailed testimony of the Taxpayer’s owner (Mr. Hart) regarding the actual condition of the Property as of the April 1, 2013 assessment date, the board finds the Town overassessed the Property to some extent in tax year 2013 due to an inadequate allowance for the fire damage. As shown on the ARC (Municipality Exhibit A), the Town applied only a 10% ‘temporary fire damage’ depreciation adjustment in 2013, which equates to a \$21,527 deduction from the estimated building value. The board finds, however, that a more reasonable temporary depreciation adjustment to account for the fire damage and the actual condition of the Property as of the April 1, 2013 assessment date is 30%, which equates to \$64,581. This estimate is consistent with Mr. Hart’s testimony, unrebutted by the Town, that the costs of repairs to restore each apartment unit to a rentable condition (after purchase of the Property in December, 2013) could have amounted to as much as \$65,000 (if the work had been performed by an outside contractor).

Applying 36% total depreciation (30% temporary fire damage and 6% “Age” depreciation) results in a total assessed building value of \$137,800, rounded. Adding this building value to the assessed land value of \$127,900 results in a total abated assessment of \$265,700.

As a test of reasonableness, the board notes an abated assessment of \$265,700 reflects an equalized market value of \$242,900, rounded, when the 109.9% level of assessment is applied. This is quite close to the Taxpayer's own estimate of market value in the appeal document (\$240,000). While the North Star Appraisal estimates a slightly lower value (\$228,000), the board finds merit in the Town's arguments (noted above) that this appraisal understates value to some extent because it fails to make adequate adjustments for differences between the Property and the comparable sales.

There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of proportionality and the resulting tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

Finally, the board placed no weight on the \$155,000 purchase price of the Property in December, 2013 because this purchase was from a bank that had foreclosed on the Property in July, 2013 and the Property remained in a fire damaged condition at the time of sale. The North Star Appraisal, completed four months after this purchase, notes this price but places no weight on it as an indication of value. Mr. Hart testified he was 'willing to pay' "\$175,000" when the Property was listed for sale at "\$179,000" earlier in 2013. The board finds, however, that he is an experienced participant in the market for income properties, intended to perform much of the needed repair work himself and, in all likelihood, understood the seller was atypically motivated, especially in light of the distressed condition of the Property at the time it was offered for sale. Taking these facts into account, the board finds the Town did not err in treating the December, 2013 transaction as an 'unqualified' sale for assessment purposes.

For all of these reasons, the board finds the assessment on the Property in tax year 2013 should be abated to \$265,700. The appeal is therefore granted.

If the taxes have been paid for tax year 2013, the amount paid on the value in excess of \$265,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Because of material physical changes in the condition of the Property, this abated assessment does not apply to tax year 2014 or any subsequent year. (See RSA 75:8; cf. 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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Albert F. Shamash, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Bellamy Rental Properties of NH, LLC, c/o Eric Parker, 205 Spur Road, Dover, NH 03820, Taxpayer; Chairman, Board of Selectmen, Town of Madbury, 13 Town Hall Road, Madbury, NH 03823; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 7/29/15

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Anne M. Stelmach, Clerk