STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

(FILED: November 14, 2016)

MICHAEL A. BALMUTH and JANET E. BALMUTH	:	
vs.	:	**C.A. No. NC-2010-0296**
DAVID E. DOLCE, in his capacity as Assessor of Taxes for the Town of Portsmouth	:	*consolidated with*
JOHN QUA and SUZANNE SCHUTTE	:	
vs.	:	**C.A. No. NC-2010-0298** **C.A. No. NC-2011-0127**
DAVID E. DOLCE, in his capacity as Assessor of Taxes for the Town of Portsmouth	:	*consolidated with*
WILLIAM S. ANTLE	:	
vs.	:	**C.A. No. NC-2010-0299** **C.A. No. NC-2011-0131**
DAVID E. DOLCE, in his capacity as Assessor of Taxes for the Town of Portsmouth	:	

DECISION

STONE, J. Before this Court for trial and decision is a five-count consolidated tax appeal from decisions of the Portsmouth Tax Assessment Board of Review (the Board). The Plaintiffs, homeowners Michael A. and Janet E. Balmuth, John Qua and Suzanne Schutte, and William S. Antle (collectively, Plaintiffs), challenge the Town of Portsmouth's (the Town or Portsmouth)

tax assessment on real properties during the Tax Years[1] 2009 and 2010. Plaintiffs challenge the valuations placed on their homes during those years and seek return of the moneys overpaid, plus costs and interest accrued. The individual Complaints have been consolidated; and, in lieu of a non-jury trial, the parties have executed an Agreed Statement of Facts and submitted individual memoranda of law. Jurisdiction is pursuant to G.L. 1956 § 44-5-26. For the reasoning set forth herein, judgment shall enter for the Plaintiffs.

I

Facts and Travel

The following facts have been stipulated to by the parties. Plaintiffs Michael A. Balmuth and Janet E. Balmuth, as of December 31, 2007 and through Portsmouth's Tax Year 2010, were the owners of a certain condominium unit designated as Unit No. 9 in Carnegie Harbor Residence Condominium, located at 294 Carnegie Harbor Drive, Portsmouth, Rhode Island, which is identified as Lot 2A-9 on Portsmouth Tax Assessor's Plat 26 (the Balmuth Property). Plaintiff William S. Antle, as of December 31, 2007 and through Portsmouth's Tax Year 2010, was the owner of a certain condominium designated as Unit 11 in Carnegie Harbor Residence Condominium, located at 271 Carnegie Harbor Drive, Portsmouth, Rhode Island, which is identified as Lot 2A-11 on Portsmouth Tax Assessor's Plat 26 (the Antle Property). Plaintiffs John Qua and Suzanne Schutte, on December 31, 2007 and through Portsmouth's Tax Year 2010, were the owners of a certain condominium unit designated as Unit No. 5 in the Carnegie Harbor Residence Condominium, located at 264 Carnegie Harbor Drive, Portsmouth, Rhode Island, which is identified as Lot 2A-5 on Portsmouth Tax Assessor's Plat 26 (the Qua Property).

[1] A "Tax Year" begins on July 1 and ends on June 30 the following year. Thus, the 2009 Tax Year began on July 1, 2009 and ended on June 30, 2010. The 2010 Tax Year began on July 1, 2010 and ended on June 30, 2011.

Defendant David E. Dolce (Defendant), the Tax Assessor of the Town of Portsmouth, conducted an updated valuation of all parcels of real estate located in Portsmouth—the assessment included those properties owned by Plaintiffs (collectively, the Plaintiffs' Properties)—as of December 31, 2007, pursuant to § 44-5-11.6. Defendant determined that the fair market value (FMV) of each property, as of December 31, 2007, was as follows:

	12/31/2007 FMV
The Balmuth Property:	$ 4,430,200
The Antle Property:	$ 4,076,500
The Qua Property:	$ 5,320,800

The parties agree that the December 31, 2007 valuations were full and fair, and that for the Tax Year 2008 Plaintiffs were not overassessed.[2] For the Tax Years 2009 and 2010, Defendant did not reevaluate Plaintiffs' Properties. Instead, Defendant carried forward the values calculated on December 31, 2007, and Plaintiffs were assessed property taxes for the Tax Years 2009 and 2010 pursuant to the Tax Year 2008 property valuations—the December 31, 2007 fair market values. The parties agree that had Defendant reevaluated the Plaintiffs' Properties on December 31, 2008 and December 31, 2009, the fair market values for each year would have been as follows:

	12/31/2008 FMV	12/31/2009 FMV
The Balmuth Property:	$ 4,107,333	N/A[3]
The Antle Property:	$ 3,668,850	$ 3,261,200
The Qua Property:	$ 4,788,720	$ 4,256,640

[2] In any given Tax Year, a property owner will be assessed property taxes pursuant to their property's value as determined on December 31 of the previous calendar year at 12:00 A.M. midnight. Sec. 44-5-1. Thus, during the Tax Year 2008, beginning July 1, 2008 and ending June 30, 2009, Plaintiffs were assessed property taxes pursuant to Defendant's valuations on December 31, 2007 at 12:00 A.M. midnight.

[3] The Balmuths only challenge the valuation assessed their home on December 31, 2008, i.e., the value upon which the Tax Year 2009 assessment was based. As such, there is no data before this Court concerning the Balmuth Property's value on December 31, 2009, i.e., the value upon which the Tax Year 2010 assessment was based.

Nevertheless, Plaintiffs paid, in a timely manner, property taxes due for the Tax Years 2009 and 2010 as follows:

	Tax Year 2009[4]	Tax Year 2010[5]
The Balmuth Property:	$ 49,906.20	N/A
The Antle Property:	$ 45,921.77	$ 46,068.53
The Qua Property:	$ 59,938.81	$ 60,130.36

The assessments in the Tax Years 2009 and 2010 were a function of the December 31, 2007 fair market values that Defendant carried forward and the applicable tax rate for each year, 1.1265% and 1.1301%, respectively.

Believing the property taxes paid in Tax Years 2009 and 2010 were based on valuations that exceeded fair market value, and pursuant to their statutory right of appeal under § 44-5-26, Plaintiffs appealed the assessments to Defendant.[6] Defendant denied Plaintiffs' appeals on the grounds that the December 31, 2007 valuations were accurate at the time and thus properly carried forward to December 31, 2008 and December 31, 2009 for use in the Tax Years 2009 and 2010, respectively. Plaintiffs then appealed Defendant's decision to the Board, which concurred with Defendant and denied Plaintiffs' appeals on the same grounds.

Plaintiffs appealed the Board's decision to the Superior Court pursuant to § 44-5-26. All five matters were consolidated and heard before this Court without the intervention of a jury. The parties have stipulated to these facts and submitted memoranda of law.

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[4] The Portsmouth tax rate for residential real property for Tax Year 2009 was 11.265% on a per one thousand dollars of assessed value basis; therefore, on a traditional per one hundred dollars of assessed value basis, the Tax Year 2009 rate can be expressed as 1.1265%.

[5] The Portsmouth tax rate for residential real property for Tax Year 2010 was 11.301% on a per one thousand dollars of assessed value basis; therefore, on a traditional per one hundred dollars of assessed value basis, the Tax Year 2010 rate can be expressed as 1.1301%.

[6] The parties have stipulated that Plaintiffs appealed Defendant's assessment pursuant to §§ 44-5-1, et seq., and such appeals to Defendant directly, and to the Board subsequently, were procedurally proper in all regards.

II

Standard of Review

In a nonjury trial, "[t]he trial justice sits as a trier of fact as well as of law." Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). At times, parties will stipulate to the facts and execute an agreed statement of facts. "'An agreed statement of facts operates to submit a controversy for consideration when both parties have agreed upon the ultimate facts.'" Hagenberg v. Avedisian, 879 A.2d 436, 441 (R.I. 2005) (quoting Randall v. Norberg, 121 R.I. 714, 717, 403 A.2d 240, 242 (1979)). When the facts are stipulated to in a non-jury trial, "the [ ] court does not play a fact-finding role, but is limited to 'applying the law to the agreed-upon facts.'" Delbonis Sand & Gravel Co., v. Town of Richmond, 909 A.2d 922, 925 (R.I. 2006) (quoting Hagenberg, 879 A.2d at 441).

III

Analysis

Plaintiffs argue on appeal that, pursuant to § 44-5-30, they are entitled to judgment in the amount of excess taxation, plus interest and costs. Plaintiffs argue that following the December 31, 2007 valuation, their Properties' values decreased significantly. As such, the assessments in Tax Years 2009 and 2010 exceeded fair market value, as they were assessed pursuant to the December 31, 2007 valuations. Defendant argues that he was required to carry forward the December 31, 2007 valuations and because the valuations on that date were fair and for the full cash value of the properties, Plaintiffs were not overassessed. The law governing Plaintiffs' appeals is clear and well settled, and the Court will address the parties' claims in seriatim below.

A

The Exclusive Remedy

Whether a tax assessment is challenged on the grounds of illegality or overassessment, "the taxing statutes provide the exclusive relief to any person aggrieved by any assessment of taxes against him by any city or town." Murray v. Rockaway Blvd. Wrecking & Lumber Co., 108 R.I. 607, 609, 277 A.2d 922, 924 (1971); see also § 44-5-27 (stating "[t]he remedy provided in § 44-5-26 is exclusive if the taxpayer owned or possessed any ratable estate at all . . . . A taxpayer alleging an illegal or void tax assessment against him or her is confined to the remedies provided by § 44-5-26"). Sec. 44-5-26, "Petition in superior court for relief from assessment," delineates the process by which a taxpayer may challenge his or her assessment, stating in pertinent part:

> "(a) Any person aggrieved on any ground whatsoever by any assessment of taxes against him or her in any city or town . . . and under obligation to pay more than one-half of the taxes thereon, may within ninety (90) days from the date the first tax payment is due, file an appeal in the local office of tax assessment . . . . The assessor has forty-five (45) days to review the appeal, render a decision and notify the taxpayer of the decision. The taxpayer, if still aggrieved, may appeal the decision of the tax assessor to the local tax board of review . . . . Appeals to the local tax board of review are to be filed not more than thirty (30) days after the assessor renders a decision and notifies the taxpayer . . . . The local tax board of review shall, within ninety (90) days of the filing of the appeal, hear the appeal and render a decision within thirty (30) days of the date that the hearing was held." Sec. 44-5-26(a).

Sec. 44-5-26(b) provides the form that a taxpayer must file when making his or her appeal. For judgment to enter in favor of the taxpayer challenging the property tax assessment, the taxpayer must demonstrate: (1) that an account has been given; (2) that the tax has been assessed in excess of the property's full and fair cash value; and (3) that the taxes on the property have been paid prior to judgment entering. See § 44-5-30. If all three elements are satisfied, the Court will

enter judgment in favor of the plaintiff and the excess moneys paid will be returned to the taxpayer, plus interest and costs. See id.

The parties agree that Plaintiffs appealed their tax assessments "in full compliance with all time and other procedural requirements of R.I.G.L. §§44-5-1 et. seq." (Agreed Statement of Facts at 3). The parties also agree that Plaintiffs timely paid all taxes, as assessed, for the years being challenged. Id. at 4-5. The issue for this Court to decide is whether the taxes assessed in Tax Years 2009 and 2010 were assessed in excess of the Properties' full and fair cash values, and if so, whether Plaintiffs may challenge Defendant's actions.

B

Fair Market Value

Sec. 44-5-12 states that "[a]ll real property subject to taxation shall be assessed at its full and fair cash value, or at a uniform percentage of its value, not to exceed one hundred percent (100%), to be determined by the assessors in each town or city[.]" "Full and fair cash value means fair market value." Merlino v. Tax Assessors for N. Providence, 114 R.I. 630, 638, 337 A.2d 796, 802 n.2 (1975) (citing to Allen v. Bonded Mun. Corp., 62 R.I. 101, 4 A.2d 249 (1938)). Our Supreme Court has explained that fair market value means "'that price the property would probably bring in a transaction in a fair market between a willing seller and a willing buyer.'" Harvard Pilgrim Health Care of New Eng., Inc. v. Gelati, 865 A.2d 1028, 1035 (R.I. 2004) (quoting Ferland Corp. v. Bouchard, 626 A.2d 210, 215 (R.I. 1993)) (citation omitted).

When a taxpayer challenges a tax assessment under § 44-5-26, the "tax assessor[] [is] entitled to a presumption that they have performed their acts properly until the contrary is proven." Id. (citing Willow St. Assocs. LLP v. Bd. of Tax Assessment Review, 798 A.2d 896, 899-900 (R.I. 2002)). "[T]he tax assessor is not bound by any particular formula, rule or method

as he seeks to ascertain the fair market value of real estate." Kargman v. Jacobs, 113 R.I. 696, 704, 325 A.2d 543, 547 (1974). The tax assessor's choice of a particular method is "a discretionary act authorized by our state constitution and delegated by the General Assembly to our state's various municipal assessors." Harvard Pilgrim Health Care of New Eng., Inc., 865 A.2d at 1035 (citing Rosen v. Restrepo, 119 R.I. 398, 401, 380 A.2d 960, 961 (1977)). The taxpayer in a tax assessment challenge carries the burden of proving that the "assessor's valuation exceeds fair market value." See id. (citation omitted); see also Nos Ltd. P'ship v. Booth, 654 A.2d 308, 310 (R.I. 1995) (stating "[i]f the taxpayer . . . claims that the assessor used an inappropriate fair market value of the subject property, the burden will be on the taxpayer to present evidence of fair market value").

In the instant matter, neither party disputes that for the Tax Year 2008 the value assessed Plaintiffs' Properties accurately reflected their fair market values. Additionally, neither party disputes that for Tax Years 2009 and 2010 the values assessed Plaintiffs' Properties exceeded their fair market values. As such, the Court need not weigh the credibility of Plaintiffs' evidence concerning fair market value, nor examine the process Defendant used to determine the December 31, 2007 fair market values. Defendant has stipulated to the fact that as of December 31, 2008 and December 31, 2009, the fair market values for Plaintiffs' Properties were lower than the fair market values as of December 31, 2007. As such, Plaintiffs have carried their burden through Defendant's consent to this fact.

The remaining issues are whether, as a matter of law, Defendant was permitted to carry forward the December 31, 2007 valuation, and, if so, whether Plaintiffs were permitted to challenge Defendant's actions. The gravamen of Plaintiffs' argument is that § 44-5-1 required Defendant to conduct an annual revaluation of all real properties in the Town. Defendant argues

that pursuant to § 44-5-11.5, Defendant was not only permitted to carry forward the December 31, 2007 valuations, but was also "locked into" the valuations for three years. Defendant argues that Plaintiffs cannot challenge the assessments from Tax Years 2009 and 2010, as the December 31, 2007 valuation did not exceed fair market value.

C

The Carry Forward

In 2001, citing the need for providing more relevant property values to cities and towns, the legislature amended § 44-5-11 to require revaluations every three years—sec. 44-5-11 previously required decennial revaluations. See § 44-5-11.5. Speaking to the issue of annual revaluations, our Supreme Court stated in Wickes Asset Mgmt. v. Dupuis:

> "There is no provision under the statutory scheme which would require interim revaluations of real property resulting from changes to property conditions or fluctuating market circumstances. The Legislature has seen fit only to require revaluations by municipalities on a decennial basis. Given the tremendous expense imposed upon municipalities in performing revaluations, we are of the opinion that the existing practice of conducting revaluations on a decennial basis is reasonable." 679 A.2d 314, 320 (R.I. 1996).

The Supreme Court made clear that, "'[a]s a practical matter, assessors cannot be expected to revalue every year, even though changes which affect property values may occur within a given year.'" Id. (quoting Uniroyal, Inc. v. Bd. of Tax Review of Middlebury, 182 Conn. 619, 629-30, 438 A.2d 782, 787 (1981)). Plaintiffs' argument that that § 44-5-1 requires annual revaluations fails in light of controlling precedent. However, Defendant's contentions that the Plaintiffs' Property values were locked in and that Plaintiffs could not appeal the assessments from Tax Years 2008 and 2009 is equally unsupported.

In Wickes Asset Mgmt., the Court went on to explain that because tax assessors may carry forward valuations from the previous Tax Year, "the Legislature [ ] provided interim

remedies for a person aggrieved by an annual tax assessment." 679 A.2d at 320. "Those remedies lie in §§ 44-5-26 and 44-5-27." Id. As such, a taxpayer is not precluded from disputing a given valuation and the assessor is not locked into that valuation until the next update. Id. The legislature abbreviated the revaluation cycle to ensure that property tax assessments reflect more relevant market data, not to remove the taxpayers' interim right to recovery. See § 44-5-11.5. While the abbreviated cycle will likely impact the frequency with which taxpayers challenge the valuations, it cannot be said to limit their ability to do so.

Rhode Island law is clear: a tax assessor must update property values once every three years to ensure that property owners are being assessed as close as is practically possible to fair market value; however, if a taxpayer is aggrieved by the actions of the assessor, and believes that an assessment in any given Tax Year is illegal or excessive, he or she may avail themselves of the interim remedial measures embodied in §§ 44-5-26 and 44-5-27. However, the taxpayer challenging a given tax assessment will carry the burden of proving that the basis valuation exceeded fair market value. See Harvard Pilgrim Health Care of New Eng., Inc., 865 A.2d 1028. In the instant matter, Defendant has conceded that Plaintiffs' Properties were taxed pursuant to valuations that exceeded fair market value as of December 31, 2008 and December 31, 2009. Plaintiffs have thus satisfied the preconditions to recovery prescribed in § 44-5-30; namely, adhering to the taxing statutes' procedural requirements, demonstrating that the subject properties were overvalued during the Tax Years in question, and timely paying all property taxes due.

D

Damages

Having determined that the taxes assessed Plaintiffs during the Tax Years 2009 and 2010 were excessive, the Court must now determine the damages owed to Plaintiffs as a result of those assessments. In Tax Years 2009 and 2010, Plaintiffs paid their property taxes in the following amounts:

	Tax Year 2009	Tax Year 2010
The Balmuth Property:	$ 49,906.20	N/A
The Antle Property:	$ 45,921.77	$ 46,068.53
The Qua Property:	$ 59,938.81	$ 60,130.36

Had Plaintiffs' Properties been assessed at their fair market values and taxed at the equivalent rates in Tax Years 2009 and 2010, 1.1265% and 1.1301% respectively, Plaintiffs would have paid property taxes in the following amounts:

	Tax Year 2009	Tax Year 2010
The Balmuth Property:	$ 46,269.11	N/A
The Antle Property:	$ 41,329.60	$ 36,854.82
The Qua Property:	$ 53,944.93	$ 48,104.29

The difference being:

	Tax Year 2009	Tax Year 2010
The Balmuth Property:	$ 3,637.09	N/A
The Antle Property:	$ 4,592.17	$ 9,213.71
The Qua Property:	$ 5,993.88	$ 12,026.07

As Plaintiffs have already paid the excessive taxes for Tax Years 2009 and 2010, this Court must "give judgment . . . for the sum by which [Plaintiffs] ha[ve] been so overtaxed, or illegally taxed, plus the amount of any penalty paid on the tax, with interest from the date on which the tax and penalty were paid and costs . . . ." Sec. 44-5-30. The Court awards Plaintiffs judgment in the

amount of moneys overpaid, plus interest accrued from the date payment occurred, as well as costs.

IV

Conclusion

For the reasons set forth above, judgment shall enter for the Plaintiffs. This Court finds that Plaintiffs have satisfied their statutory obligations under §§ 44-5-1 et seq., and that the assessments in Tax Years 2009 and 2010 exceeded fair market value. While Defendant was permitted to carry forward the December 31, 2007 valuations, the valuations were not "locked in" and did not prevent Plaintiffs from challenging the assessments pursuant to § 44-5-26. Counsel shall confer and submit an order for entry that is in accordance with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:

MICHAEL A. BALMUTH and
JANET E. BALMUTH
vs.
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CASE NO: **NC-2010-0296; NC-2010-0298; NC-2011-0127; NC-2010-0299; NC-2011-0131**

COURT: **Newport County Superior Court**

DATE DECISION FILED: **November 14, 2016**

JUSTICE/MAGISTRATE: **Stone, J.**

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