

**Lynn M. Thomas**

**v.**

**Town of Westmoreland**

**Docket No.: 20029-03PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$491,600 (land \$225,000; buildings \$266,600) on Map R5, Lot 14, a single-family residence on 5.0 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 Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) based on an “Appraisal” (Taxpayer Exhibit No. 1), the Property’s market value was \$400,000 on April 1, 2003;

- (2) her sale of the Property in June 2005 for \$525,000 should have a bearing on subsequent assessments but not the 2003 assessment on appeal;
- (3) there are no sales to support the Town's land portion of the assessment; and
- (4) the assessment should be \$425,000.

The Town proposed a revised assessment of \$446,400 and argued the revised assessment was proper because:

- (1) the Appraisal has some flaws which, if corrected, would result in a value close to the Town's revised assessment;
- (2) the Property's 2005 sale price of \$525,000 multiplied by the Town's 2005 equalization ratio of 83.5% supports the Town's revised assessment; and
- (3) the Town removed the landscaping adjustment previously applied to the site value resulting in a more accurate, revised assessment.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be \$446,600.

The board's finding is based on the Town's proposed revised assessment with a minor modification. The Town testified it determined the proposed revised assessment by removing the 50% landscaping adjustment made to the site assessment, reducing the land assessment from \$225,000 to \$180,000. While it was unclear from the testimony as to the original basis for the 50% landscape factor, the board agrees with the Town that the 2005 sale of the Property indicates the adjustment was not reflected in the market and warrants its removal. Adding the revised land value of \$180,000 to the building value of \$259,700 and the extra features value of \$6,900 yields a revised assessment of \$446,600. The board finds this was most probably the intended revised assessment the Town would have proposed but at some point in its calculations

apparently made a slight mathematical error resulting in the \$200 discrepancy between the Town's proposed figure and the board's calculated value.

As further support for the revised assessment, the Town stated the Property's market value on April 1, 2003 can be estimated by multiplying the Property's June 2005 selling price by the 2005 equalization ratio. Making this calculation ( $\$525,000 \times 0.835$ ) indicates a market value for the Property of \$438,375 on April 1, 2003 (Taxpayer Exhibit No. 2). This comports with the Town's proposed revised estimate of \$446,400.

The Taxpayer stated she commissioned the Appraisal, which was performed for this appeal, that estimated the Property's market value at \$400,000 on April 1, 2003. The Taxpayer contends the Appraisal is evidence the Property is overassessed. In response, the Town testified the Appraisal has some flaws which when corrected would support the Town's proposed revised assessment. Primarily, the Town focused on the lack of a time adjustment for market conditions. The board concurs generally with the Town's reasoning. The Taxpayer's appraiser writes on the second page of the Appraisal's addendum under sale #2 "no time adjustments are being used and market values are considered to have remained fairly constant in this time frame." The appraiser provides no supporting evidence for the basis of this conclusory statement. An adjustment, or lack thereof, for market conditions (time) warrants a more thorough explanation. The Town's estimated 0.5% to 0.75% per month rate of appreciation was based on its knowledge of sales that had occurred. The board finds the Town's rate estimates to be more reasonably supported by the testimony and the change in the Town's equalization ratio than the appraiser's. Applying the

Town's estimated rates of appreciation to the Property's 2005 selling price results in market value estimates that bracket the revised assessment.<sup>1</sup>

For the reasons previously stated, the board finds the correct assessment for the Property to be the Town's revised assessment with the minor correction noted to \$446,600.

If the taxes have been paid, the amount paid on the value in excess of \$446,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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(f). 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.

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<sup>1</sup> Using 0.5% per month, the Property's April 1, 2003 market value is calculated to be \$456,750 [(26 mos. X 0.5%/mo. = 13%) and \$525,000 - 13% = \$456,750]. Similarly, using 0.75% per month, the Property's April 1, 2003 market value is calculated to be \$422,625 [(26 mos. X 0.75%/mo. = 19.5%) and \$525,000 - 19.5% = \$422,625]

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Lynn M. Thomas, PO Box 208, Spofford, NH 03462, Taxpayer; Gary J. Roberge and Jon Duhamel, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representatives; and Chairman, Board of Selectmen, Town of Westmoreland, PO Box 55, Westmoreland, NH 03467.

Date: May 16, 2006

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Anne M. Stelmach, Clerk