

**Gary and Andrea Atturio, et. al.**

**v.**

**Town of Thornton**

**Docket Nos.: 21276-04PT/22204-05PT, et. al.**

**DECISION**

The following “Taxpayers”, consolidated for hearing purposes and represented by Mr. Thomas N. T. Mullen, a principal of Owl Street Associates, LLC, (“OSA”) and his daughter, Kelly M. Wieser, Esq., appeal pursuant to RSA 76:16-a, the “Town’s” assessments as listed below. The hearings for these consolidated appeals were held on April 3 and 4, 2007. A hearing on properties owned by OSA (Docket Nos.: 21244-04PT/22474-05PT) was held the following week on April 12, 2007. Given the similarity of properties and issues raised and the common Taxpayers’ representatives (Mr. Mullen and Attorney Wieser), the parties agreed the board could take official notice of the testimony and exhibits presented during the three days of hearing. See RSA 541-A:31, VI-d.

The individual properties under appeal (“Appealed Properties”) are located in a development known as “Owl’s Nest”<sup>1</sup> and are comprised of several residential lots at “Haartz Intervale”, and all sites and condominiums that had been sold as of the assessment dates, at the “villages” known as “Link Side” and “Green Scapes”.

---

<sup>1</sup> The Owl’s Nest development is located in the towns of Thornton and Campton. Mr. Mullen and Attorney Wieser also filed twelve appeals on behalf of property owners in the Campton portion of Owl’s Nest. The board was apprised the Campton cases had settled.

## Gary and Andrea Autturio, et. al. v. Town of Thornton

Docket No.: 21276-04PT

Page 2 of 24

Docket No.	Map/Lot/Sublot	Case Name	Land Value	Building Value	Total
21276-04PT	16/000001/08LS07	Atturio, Gary & Andrea v. Thornton	\$ 189,400	\$ 230,700	\$ 420,100
22204-05PT	16/000001/08LS07	Atturio, Andrea J. & Gary A. v. Thornton	\$ 189,400	\$ 230,700	\$ 420,100
22176-05PT	16/000001/08GS07	Balcom, Thomas E. v. Thornton	\$ 127,000	\$ 181,000	\$ 308,000
22205-05PT	16/000001/08LS08	Branscombe, Paul & Karin v. Thornton	\$ 190,100	\$ 356,300	\$ 546,400
21274-04PT	16/000001/08LS08	Branscombe, Paul & Karin v. Thornton	\$ 190,100	\$ 356,300	\$ 546,400
21253-04PT	16/000001/08LS06	Brustlin Trust v. Thornton	\$ 171,300		\$ 171,300
22203-05PT	16/000001/08LS06	Brustlin Trust v. Thornton	\$ 196,200	\$ 299,600	\$ 495,800
21312-04PT	16/000001/08GS15	Chong, Jae v. Thornton	\$ 96,400		\$ 96,400
22182-05PT	16/000001/08GS15	Chong, Jae Y. v. Thornton	\$ 96,400		\$ 96,400
21185-04PT	16/000001/08GS03	Collins, Donna M. & Philip	\$ 78,200		\$ 78,200
21271-04PT	16/000001/08LS10	Comstock, Jr., Claire & Henry v. Thornton	\$ 161,700		\$ 161,700
22207-05PT	16/000001/08LS10	Comstock, Jr., Claire B. & Henry W. v. Thornton	\$ 226,300	\$ 322,200	\$ 548,500
22213-05PT	16/000001/08LS17	Daley, Michele A. v. Thornton	\$ 224,000	\$ 65,500	\$ 289,500
21261-04PT	16/000001/08LS17	Daley, Michele v. Thornton	\$ 371,300	\$ 65,500	\$ 436,800
22194-05PT	16/000001/000028	David & Marsha Gintzler Trusts v. Thornton	\$ 128,000	\$ 210,700	\$ 338,700
21267-04PT	16/000001/08LS12	DeDonato, David & Karen v. Thornton	\$ 170,000		\$ 170,000
22209-05PT	16/000001/08LS12	DeDonato, David J. & Karen M. v. Thornton	\$ 170,000		\$ 170,000
22178-05PT	16/000001/08GS09	Dineen, W. & L./Stanford, Kirk & Ellen v. Thornton	\$ 115,700	\$ 900	\$ 116,600
22198-05PT	16/000001/000017	Dudley, Catherine & Takazawa, Anthony v. Thornton	\$ 203,400	\$ 304,000	\$ 507,400
21250-04PT	16/000001/000017	Dudley, Catherine & Takazawa, Anthony v. Thornton	\$ 203,400	\$ 304,000	\$ 507,400
22179-05PT	16/000001/08GS10	Durney, Patrick & Lauren v. Thornton	\$ 115,700	\$ 900	\$ 116,600
21266-04PT	16/000001/08LS14	Ehart, Jeffrey & Anne v. Thornton	\$ 196,500	\$ 179,100	\$ 375,600
21256-04PT	16/000001/08LS03	Friedman, Mara v. Thornton	\$ 202,800	\$ 182,700	\$ 385,500
21263-04PT	16/000001/08LS16	Greene, William & Susie v. Thornton	\$ 192,700	\$ 173,200	\$ 365,900
21252-04PT	16/000001/002402	Hepworth, David & Keren v. Thornton	\$ 129,700	\$ 248,900	\$ 378,600
22195-05PT	16/000001/000016	Hsieh, Jim & Charlotte v. Thornton	\$ 143,000		\$ 143,000
22208-05PT	16/000001/08LS11	Julianne P. Patterson Trust v. Thornton	\$ 160,400		\$ 160,400
21269-04PT	16/000001/08LS11	Julianne P. Patterson Trust v. Thornton	\$ 60,400		\$ 60,400
22196-05PT	16/000001/000012	LaMarche, James Jay v. Thornton	\$ 202,600	\$ 224,300	\$ 426,900
21247-04PT	16/000001/000012	LaMarche, James v. Thornton	\$ 151,500		\$ 151,500
22201-05PT	16/000001/08LS04	McNamara, J. Michael & Judith v. Thornton	\$ 190,600	\$ 234,800	\$ 425,400
22181-05PT	16/000001/08GS14	Meehan, Thomas G. & Suzanne H. v. Thornton	\$ 78,200		\$ 78,200
22206-05PT	16/000001/08LS09	Milne, Thomas Michael v. Thornton	\$ 161,500		\$ 161,500
21273-04PT	16/000001/08LS09	Milne, Thomas v. Thornton	\$ 161,500		\$ 161,500
22199-05PT	16/000001/08LS01	Mosholder, C. Thomas & Patricia v. Thornton	\$ 237,100	\$ 162,700	\$ 399,800
21258-04PT	16/000001/08LS01	Mosholder, Thomas & Patricia v. Thornton	\$ 237,100	\$ 159,300	\$ 396,400
22180-05PT	16/000001/08GS13	Nykqvist, William & Faye v. Thornton	\$ 78,200		\$ 78,200
21315-04PT	16/000001/08GS06	Olson, Eric & Christine v. Thornton	\$ 96,800		\$ 96,800
22175-05PT	16/000001/08GS06	Olson, Eric J. & Christine v. Thornton	\$ 129,000	\$ 263,500	\$ 392,500
21324-04PT	16/000001/08GS01	Olson, John & Dyann v. Thornton	\$ 97,500		\$ 97,500
22171-05PT	16/000001/08GS01	Olson, John & Dyann v. Thornton	\$ 130,000	\$ 300,200	\$ 430,200
21319-04PT	16/000001/08GS04	Palmer, Maureen v. Thornton	\$ 78,200		\$ 78,200
22173-05PT	16/000001/08GS04	Palmer, Maureen v. Thornton	\$ 110,700	\$ 271,300	\$ 82,000
21317-04PT	16/000001/08GS05	Pingitore, Ernest & Donna v. Thornton	\$ 96,800		\$ 96,800
22174-05PT	16/000001/08GS05	Pingitore, Ernest E. & Donna J. v. Thornton	\$ 129,000	\$ 205,200	\$ 334,200
22211-05PT	16/000001/08LS15	Reagan, Mark E. v. Thornton	\$ 193,600	\$ 201,400	\$ 395,000
21264-04PT	16/000001/08LS15	Reagan, Mark v. Thornton	\$ 193,600	\$ 96,600	\$ 290,200
22177-05PT	16/000001/08GS08	Rogozinski, Craig L. & Lisa D. v. Thornton	\$ 114,300	\$ 232,000	\$ 346,300
21322-04PT	16/000001/08GS02	Schumacher, James & Sarah v. Thornton	\$ 97,500		\$ 97,500
22172-05PT	16/000001/08GS02	Schumacher, James & Sarah v. Thornton	\$ 130,000	\$ 224,900	\$ 354,900
21254-04PT	16/000001/08LS05	Stack, Constance & Pecci, Michael v. Thornton	\$ 156,600		\$ 156,600
22202-05PT	16/000001/08LS05	Stack, Constance A. & Pecci, Michael A. v. Thornton	\$ 187,900	\$ 271,100	\$ 459,000
22212-05PT	16/000001/08LS16	Susan E. Greene Trust v. Thornton	\$ 224,800	\$ 176,800	\$ 401,600
21260-04PT	16/000001/08LS18	Turley, Timothy & Duffy, Ellen v. Thornton	\$ 197,700	\$ 149,600	\$ 347,300
22214-05PT	16/000001/08LS18	Turley, Timothy M. v. Thornton	\$ 197,700	\$ 152,600	\$ 350,300
22200-05PT	16/000001/08LS02	Wilkins, Anthony J. v. Thornton	\$ 229,400	\$ 209,800	\$ 439,200
21257-04PT	16/000001/08LS02	Wilkins, Anthony v. Thornton	\$ 229,400	\$ 205,300	\$ 434,700
22210-05PT	16/000001/08LS14	Yanovitch, John P. & Bridie v. Thornton	\$ 196,500	\$ 182,800	\$ 379,300

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 Appealed Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers did not carry this burden. For the reasons detailed in the board's rulings, the appeals for abatement are denied.

### **Parties' Arguments**

The Taxpayers argued the assessments were excessive because:

- (1) the land values were improperly determined by the Town's contract assessing firm, Avitar Associates of New England, Inc. ("Avitar"); the improvement values are accepted as reasonable;
- (2) Avitar improperly relied upon sale prices as indicated by the transfer tax stamps on the deeds of properties which sold at Owl's Nest;
- (3) the sale or consideration prices contained significant intangible items which are not realty, and therefore non-taxable, including architectural fee allowances, "as built" floor plan allowances, "as built" site plan allowances, multi-year "Vested Nester" golf memberships, "Activity Center" initiation fees, "Owl's Nest Players Club Memberships" and waiver of water system hook up availability fees, ranging in total value from \$45,000 to \$105,000 (average value of the intangibles at \$75,000);
- (4) the sale prices should have deducted from them at least the \$75,000 estimate for the intangible non-taxable items to arrive at the net taxable real estate value;

### **Link Side**

- (5) the average residential site at Link Side is 0.138 acres, significantly smaller than the

one acre to four acre home sites in Haartz Intervale and yet assessed values do not reflect this significantly smaller lot size;

(6) the Town should have utilized a basic lot value of \$34,000 in Link Side, rather than the \$85,000 base rate to keep the assessments comparable within Owl's Nest and with properties throughout the Town;

(7) the balance of the land necessary to comply with Thornton's one unit per one acre density requirement is contained in the golf course and separately assessed to OSA and, in fact, several of the Link Side common septic systems are located by easement on the golf course land;

(8) the lots on the east side of Link Side are less desirable and valuable because they do not have the westerly mountain views which the lots on the west side of Link Side have, but rather look up grade to the ninth fairway of the golf course;

#### Green Scapes

(9) the average duplex-condominium site at Green Scapes is 0.119 acres, significantly smaller than the one acre to four acre home sites in Haartz Intervale and yet assessed values do not reflect this significantly smaller lot size;

(10) the Town should have utilized a basic lot value of \$34,000 in Green Scapes, rather than the \$85,000 base rate to keep the assessments comparable within Owl's Nest and with properties throughout the Town;

(11) the Green Scapes condominium sites should be assessed based on a market value of \$40,000 derived from the most recent site sale prices of \$55,000 minus \$15,000 for the Activity Center initiation fee;

(12) the earlier site sale prices of \$80,000 to \$110,000 on which Avitar based its assessments are not indicative of market value because in addition to including various intangible items, the price

also included a “front loading” of the developer’s profit from the ultimate construction of the condominium unit on the site; and

(13) a number of negative market factors exist, including latent traffic noise from Interstate 93, the close proximity of the units to one another and easements on the sites for the benefit of the golf course.

The Town argued the assessments were proper because:

- (1) the Taxpayers’ challenge is only to the land portion of the assessment but the total assessment must be considered to determine whether the Appealed Properties are proportionately assessed;
- (2) the Town reviewed all the transactions at Owl’s Nest as the basis for its assessing and in particular, the few second and third “generation” sales: these sales indicate the items claimed as intangibles by the Taxpayers are being transferred with the real estate;
- (3) there are inconsistencies in the various department of revenue administration inventory of property transfer forms (“PA-34”) and the 78-B:10 Real Estate Transfer Tax Declaration of Consideration forms (“Declaration of Consideration”) as to whether the sale prices were an accurate indication of market value or whether they included any “special circumstances”;
- (4) the more recent \$55,000 sale price of sites at Green Scapes are not indicative of their market value because some were not arm’s-length transactions and the total price paid by purchasers to OSA for the site and construction of the unit did not change;
- (5) real estate loans appear to be obtained by the Taxpayers at the traditional 80% level of sale price without any deduction for the intangible items;

(6) the difference in size of the lots at Haartz Intervale, Link Side and Green Scapes does not result in significantly different values because all contain the ability to construct a residence and enjoy the amenities at Owl's Nest; and

(7) sales of average lots outside Owl's Nest, with no views or other amenities, indicated a base value per building site of \$34,000 while other sales with views indicated land values of \$90,000 to \$100,000, similar to the Owl's Nest sale prices for building sites.

The parties stipulated the 2004 and 2005 levels of assessment were 96.4% and 90.8%. As noted earlier, the parties also agreed the board could take official notice pursuant to RSA 541-A:31, VI(d) of the testimony and evidence received in the individual property owners' appeals (Owl Street Associates, LLC v. Town of Thornton, Docket Nos. 21244-04PT/22474-05PT) heard on April 12, 2007. Because the board has considered the evidence submitted in both groups of appeals, references to exhibits are followed with the date of the hearing at which it was submitted.

On May 3, 2007 the board viewed, from the exterior, the Appealed Properties, the golf course, club house, the Activity Center and many of the areas designated on the master plan for future development.

### **Board's Rulings**

The board finds the Taxpayers did not carry their burden to show the assessed values were disproportionate to market value.

#### Overview

Before proceeding to the board's detailed findings, an overview of the OSA development in the Town of Thornton and in the adjoining Town of Campton is helpful in understanding the board's conclusions. Based on the testimony and master plan (see Taxpayer Exhibit No. 4 –

04-03-07 and Municipality Exhibit No. A – 04-12-07), OSA owned, as of April 1, 2004, nearly 280 acres in Thornton. The acreage is comprised of the original acquisitions of 110.81 acres and the Pike Industries land (acquired in February 2004) of 167.05. The OSA development is bisected by the Campton-Thornton town line and includes approximately 235 additional acres in the Town of Campton.<sup>2</sup> The master plan depicts the development of single-family lot villages, single-unit condominium villages and duplex condominium villages arranged to take advantage of views of the mountains and the eighteen hole championship golf course developed by OSA in 1997-1999. During the two years under appeal only some of the villages were under development, including Haartz Intervale, Link Side, Green Scapes, and Pine Ridge (in Campton). On its view, the board noted ongoing development of other villages subsequent to the years under appeal.

The Owl's Nest development is adjacent to Interstate 93, is fronted on the west side by the Pemigewasset River and has "spectacular views from every corner of the [golf] course" (Municipality Exhibit No. B – 04-12-07, p. 1). The eighteen hole championship golf course was professionally designed by Mark Mungeam of Cornish, Silva and Mungeam Inc. and includes a club house with a restaurant, "cart barn", and a maintenance facility. Adjacent to Green Scapes is the current Activity Center which contains an exercise room, a tennis court, an outdoor pool, an indoor pool, a catering kitchen and the sales and business offices of OSA.

Different from most other recreational developments, the common amenities such as the golf course, club house and the Activity Center are currently not part of any unit owners association. The ownership of these amenities is retained by OSA but the golf course and club

---

<sup>2</sup> The board has estimated the OSA acreage in Campton by reviewing the assessment-record cards contained in Docket No. 21309-04, Owl Street Associates, LLC v. Town of Campton and the various individual site owners at Pine Ridge Village (Campton) who had filed appeals with the board.

house are open to Owl's Nest residents and the general public. However, the general public has no access to the Activity Center. Access to the Activity Center and preferred access and privileges to the golf course and club house are through memberships, either given by OSA at the time of the purchase of a lot, site or unit at Owl's Nest, or in the future, through a separate membership purchase by subsequent owners at Owl's Nest. However, only owners of property at Owl's Nest have the ability to be members and join the Activity Center, and the Owl's Nest Player's Club Membership, which provides for preferred "tee times" and other privileges to the golf course (Taxpayer Exhibit No. 7 – 04-03-07). The only areas currently held in common through associations are the infrastructures supporting the various villages such as developed roads, common septic systems and land in the immediate village vicinity.

#### Detailed Findings

The Taxpayers' primary argument was that the sale prices of sites and units at Owl's Nest included consideration for non-realty items, entitled "intangibles" by Mr. Mullen, including architectural fee allowances, "as built" floor and site plan allowances, multi-year "Vested Nester" golf memberships, Activity Center initiation fees, Owl's Nest Players Club Memberships and water system hook up availability fees. They argued the Town's reliance on the sale prices ("tax stamp chasing", as dubbed by Mr. Mullen) produced assessments which exceeded the market value of the taxable real estate. While the evidence is not unequivocal on this issue, the board finds the preponderance of the evidence supports the conclusion the sale prices, with the exception of the four Green Scapes sales in 2005 for \$55,000, generally reflect the consideration paid for the real estate rights including land, buildings, views, location, and proximity to the excellent golf facilities. Any memberships that were also provided at the time

of the transfers appear to primarily be marketing incentives and of nominal value relative to the real estate value.

In reaching this conclusion, the board considered and applied the following statutory and case law provisions relative to taxable market value.

The legislature has provided that all real estate is taxable, unless otherwise provided, (see RSA 72:6 and RSA 72:7) and such real estate shall be assessed at market value (see RSA 75:1). RSA 21:21<sup>3</sup> defines real estate as including all tangible and intangible rights associated with real property. While they vary from property to property, these ownership rights are often viewed as a "bundle of rights." Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to exclude others, to give it away, or to choose to exercise all or none of these rights. "The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest." Appraisal Institute, The Appraisal of Real Estate, p. 7 (11<sup>th</sup> ed. 1996).

Further, in valuing the bundle of rights for each property, all relevant factors that have an affect on value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

In valuing taxable property, the transmissible value, not necessarily the value to the owner, is material in the determination of an assessment. 590 Realty Co., Ltd v. City of Keene, 122 N.H. 284, 287 (1982); and Public Service of New Hampshire v. New Hampton, 101 N.H. 142, 148 (1957).

---

<sup>3</sup> "I. The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.

II. Manufactured housing as defined by RSA 674:31 shall be included in the term 'real estate'."

When utilizing sales as the basis for estimating market value, a number of factors must be considered in determining whether sales are indicative of market value, “including whether the sale was an arm's length transaction, whether additional incentives were offered, whether unusual duress existed against either the buyer or seller, and whether some relationship existed between the buyer and seller that would influence the sale price.” (Citations omitted.) Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253, 255 (1994).

In determining whether the Taxpayers' assessments are disproportionate, the board must consider the aggregate valuation of land and buildings, not just one component such as the land as argued by the Taxpayers. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). LSP Ass'n v. Town of Gilford, 142 N.H. 369, 372 (1997). (“In order to prevail in a tax abatement appeal, the Plaintiff must prove the total tax assessment is improper, not that one portion of it is improper.”)

And last, the board is mindful of the limited case law in New Hampshire on the valuation of common amenities and the possible allocation of sale prices between realty and personalty. The majority holding of LSP Ass'n at 369 ruled “site amenities” assessments were not taxable real estate rights because they are based on the license granted by the association's by-laws and dwelling unit rights agreement to the land. Although in Locke Lake Colony Association, Inc. v. Town of Barnstead, 126 N.H. 136 (1985) and Waterville Estates Association v. Town of Campton, 122 N.H. 506 (1982), the court held that unit owners deeded right to use common property were easements or “sufficiently akin” to easements so as to be directly taxable to the unit owners and not the homeowners association. The board is also mindful of an earlier holding in Appeal of Town of Plymouth, 125 N.H. 141, 145 (1984) where items such as ski passes, furnishings and rental and cleaning charges are not intimately intertwined with the land

and “are not specialized intrinsic features which made the condominium in question function as a condominium.” (Citation omitted.)

Because the Owl’s Nest development is relatively new and because it includes certain market attributes not present in properties outside the development, the Town was correct in reviewing the sales which had occurred to date in Owl’s Nest to form the basis of its assessments. Such raw sales data are proxies for market value and thus for proportionate assessment (RSA 75:1). Thus the pivotal question becomes whether the recorded sale prices were arm’s-length transactions and whether they included certain features not “intimately intertwined with the primary use of the condominium property” (Plymouth at 145) or included incentives which are non-taxable real estate (Society Hill at 255). For the following reasons the board finds the recorded transaction prices relate to the primary rights transmissible with the real estate, such as the right to enjoy certain land and buildings and situs’ amenities of views and proximity to an excellent golf facility. Thus, those sale prices are inherently good proxies from which to derive market/assessed values.

Because the sales are key to determining proportionate assessed values, the following spread sheet lists the sale prices of all the Appealed Properties. In the instance of Green Scapes, where sites were sold and then subsequent construction contracts were entered into between the purchaser and OSA, the spreadsheet lists both the site transaction prices and the construction costs as itemized in Taxpayer Exhibit No. 2 (4-12-07) to arrive at the total transaction price. For Haartz Intervale lots 12 and 16, the board has researched the prior sale prices before OSA had acquired the balance of that subdivision and listed those initial sales to the Taxpayers from a prior developer, Exit 29 Associates.

Map/Lot/Sublot Street Location	Grantor/Grantee (Land/Site and Building)	Sale Price	Sale Date	Green Scapes Construction Cost (Size) (Taxpayer Exhibit No. 2)	Green Scapes Total Cost
16/000001/000012 - Haartz Intervale, 147 Pemi River Rd.	Exit 29 Assoc. to Bowley (Land only) Bowley to LaMarche (Land only)	\$35,000 \$140,000	9/25/89 7/12/2002		
16/000001/000016 - Haartz Intervale, Notchway	Exit 29 Assoc. to Hsieh (Land only)	\$60,000	11/20/1989		
16/000001/000017 - Haartz Intervale, 22 Notchway	OSA to Dudley (Land only)	\$184,000	11/14/2000		
16/000001/000028 - Haartz Intervale, 139 Pemi. River Rd.	OSA to Little (Land & Building) Little to Gintzler (Land & Building)	\$320,000 \$350,000	5/29/2003 4/15/2005		
16/000001/002402 - Haartz Intervale, 6 Southwest Spur Rd.	OSA to Hepworth (Land only)	\$90,000	8/8/2000		
16/000001/08GS01 - Green Scapes # 1	OSA to Olson (Site only)	\$100,000	3/11/2004	\$280,288 (2 bedroom)	\$380,288
16/000001/08GS02 - Green Scapes # 2	OSA to Schumacher (Site only)	\$80,000	12/5/2003	\$211,925 (2 bedroom)	\$291,925
16/000001/08GS03 - Green Scapes # 3	OSA to Collins (Site only)	\$80,000	4/21/2004	\$320,000 (3 bedroom)	\$400,000
16/000001/08GS04 - Green Scapes # 4	OSA to Palmer (Site only)	\$80,000	6/22/2004	\$287,356 (3 bedroom)	\$367,356
16/000001/08GS05 - Green Scapes # 5	OSA to Pingitore (Site only)	\$100,000	2/6/2004	\$200,000 (2 bedroom)	\$300,000
16/000001/08GS06 - Green Scapes # 6	OSA to Olson (Site only)	\$100,000	8/30/2004	\$330,404 (3 bedroom)	\$430,404
16/000001/08GS07 - Green Scapes # 7	OSA to Balcom (Site only)	\$55,000	1/25/2005	\$295,000 (2 bedroom)	\$350,000
16/000001/08GS08 - Green Scapes # 8	OSA to Rogozinski (Site only)	\$55,000	7/5/2005	\$395,000 (3 bedroom)	\$450,000
16/000001/08GS09 - Green Scapes # 9	OSA to Chong (Site only) (Chong to OSA) OSA to Dineen	\$80,000 \$80,000 \$110,000	12/12/2003 5/24/2005 9/6/2005	\$250,000 (2 bedroom)	\$360,000
16/000001/08GS10 - Green Scapes #10	OSA to Durney (Site only)	\$55,000	4/6/2005	\$374,500 (3 bedroom)	\$429,500
16/000001/08GS13 - Green Scapes # 13	OSA to Nykvist (Site only)	\$55,000	Feb-06	\$0	\$55,000
16/000001/08GS14 - Green Scapes # 14	OSA to Meehan (Site only)	\$125,000	9/29/2005	\$325,000 (3 bedroom)	\$450,000
16/000001/08GS15 - Green Scapes # 15	OSA to Chong (Site only)	\$80,000	5/24/2005	\$0	\$80,000
16/000001/08LS01 - Link Side # 1	OSA to Mosholder (Land only)	\$70,000	10/26/2001		
16/000001/08LS02 - Link Side # 2	OSA to Wilkins (Land only)	\$110,000	12/7/2001		
16/000001/08LS03 - Link Side #3	OSA to Friedman (Land only)	\$125,000	5/5/2003		

16/000001/08LS04 - Link Side #4	OSA to Pedi (Land only) Pedi to McNamara (Land & Building)	\$115,000 \$455,000	7/29/2002 7/29/2005		
16/000001/08LS05 - Link Side # 5	OSA to Stack (Land only)	\$115,000	9/16/2002		
16/000001/08LS06 - Link Side # 6	OSA to Scibilia (Land only) Scibilia to Brustlin (Land only)	\$100,000 \$159,000	2/12/2001 10/24/2003		
16/000001/08LS07 - Link Side # 7	OSA to Atturio (Land only)	\$115,000	5/5/2003		
16/000001/08LS08 - Link Side # 8	OSA to Branscombe (Land only)	\$125,000	12/28/2001		
16/000001/08LS09 - Link Side #9	OSA to Butler Butler to Costello Costello to Milne (Land only)	\$125,000 \$160,000 \$177,330	11/20/2002 9/10/2003 10/1/2004		
16/000001/08LS10 - Link Side # 10	OSA to Minty (Land only) Minty to Comstock (Land only)	\$119,000 \$156,000	10/30/2001 11/3/2003		
16/000001/08LS11 - Link Side #11	OSA to Patterson Trust (Land only)	\$150,000	12/12/2002		
16/000001/08LS12 - Link Side # 12	OSA to DeDonato (Land only)	\$120,000	12/29/2000		
16/000001/08LS14 - Link Side #14	OSA to Ehart (Land only) Ehart to Yanovitch (Land & Building)	\$95,000 \$410,000	4/29/2002 11/9/2005		
16/000001/08LS15 - Link Side # 15	OSA to Reagan (Land only)	\$90,000	1/22/2003		
16/000001/08LS16 - Link Side # 16	OSA to Green Trust (Land only)	\$77,900	12/24/2002		
16/000001/08LS17 - Link Side # 17	OSA to Daley (Land only)	\$90,000	1/21/2003		
16/000001/08LS18 - Link Side # 18	OSA to Turley (Land only)	\$85,000	1/14/2002		

A number of factors cause the board to reach the conclusion the sale prices are generally reflective of taxable market value.

Both the Town and the Taxpayers submitted numerous copies of purchase and sale agreements, deeds, PA-34s; (see RSA 74:18) and “Declaration of Considerations” for the RSA ch. 78-B transfer tax. Collectively, these documents are inconsistent and inconclusive in what appears to be an effort by OSA to have “intangibles” noted as being part of the transaction price so as to lower the net taxable real estate value. Several examples are illustrative.

In Municipality Exhibit No. A – 04-03-07, the purchase and sale agreement states the “total selling price” of Link Side #9 to be \$125,000. “Additional provisions” of the purchase and

sale agreement states the “selling price” includes two “Vested Nester Memberships” for the 2004 golf season, a \$4,000 allowance for architectural drawings for a house and a \$1,000 allowance for a septic system permit. However, the PA-34 for that transaction indicates there were no special circumstances in the consideration price and the selling price was fair market value. Nonetheless, the Declaration of Consideration notes there were “special circumstances” which are identified in an attachment as golf course memberships, an architectural fee allowance, an engineering fee allowance, consulting fees for preparation of site plans, a number of site work improvements and a waiver of water hook up availability charge. However, the transfer tax was paid on the full \$125,000 sale price.

Another inconsistency is shown in Municipality Exhibit No. C – 04-03-07, which contains the sale documents relative to Link Side #17. The purchase and sale agreement identifies a “total selling price” of \$90,000 with special provisions of two Vested Nester golf memberships, a \$3,000 architectural allowance and a \$1,000 engineering allowance. The PA-34, however, again notes there were no special circumstances and the selling price was at market value. The Declaration for Consideration, however, does note “special circumstances” and notes the two year golf course memberships, allowances for architectural and engineering fees and for site work improvements and a waiver of water hook up availability charge. Again, however, the transfer tax was paid on the “total selling price”.

Another transfer of particular interest in Municipality Exhibit No. A – 04-03-07 is the sale and re-sale of 139 Pemi River Road, a Haartz Intervale lot (Map 16/Lot 000001/000017). OSA sold the lot and dwelling to Little on 5/29/2003 for \$320,000. An attachment to the PA-34 indicates the sale price included many intangibles and “[a]s a further inducement to the Buyer, the Seller has agreed to lease back the house for a two year period at a price well in excess of fair

market rent.” (Municipality Exhibit No. A – 04-03-07). And yet two years later, Little sold the property to Gintzler for \$350,000 with no “special circumstances” indicated on that PA-34.

These transactions are an indication the “special circumstances” and the Taxpayers’ \$75,000 estimate for intangibles (Taxpayer Exhibit No. 8 – 04-03-07) were of little or no consequence in the resale to Gintzler in 2005.

Additional inconsistencies are contained in several other PA-34’s in Municipality Exhibit No. A – 04-03-07, which in some cases, indicate no “special circumstances” occurred while others noted there were, describing them as golf memberships, various building allowances and waiver of water hook up availability charges.

The Taxpayers provided no documentation as to the basis for the estimates of the value for the various intangibles. Taxpayer Exhibit No. 8 – 04-03-07 is a hand written estimate of the value range of the intangibles with no supporting market related documentation other than the numbers cited in the various purchase and sale agreements and several of the PA-34’s. These estimates are entirely the creation of OSA and have no independent or market tested basis.

Additional evidence that the sale prices are generally reflective of market value is the fact that several properties have re-sold after the initial sale by OSA and those resales indicate that whatever rights were initially acquired from OSA have been transferred to “second” and “third” generation owners. (See resale’s of: 139 Pemi River Road; Link Side #4; Like Side #6; Link Side #9; Link Side #10 and Link Side #14.) At hearing, Mr. Mullen argued the transfer of those intangibles in the second and third generation sales occurred only with the explicit permission of OSA and he pointed to the resale and the second resale of Link Side #9 as an example. The PA-34’s and the Taxpayers’ response to the Town’s interrogatories relative to Link Side #9 are contained in Municipality Exhibit No. A – 04-03-07 and indicate the resale from Butler to

Costello in September 2003 included a number of intangible items, as did the subsequent sale of Costello to Milne in 2004. However, the Taxpayers' interrogatories were answered by their representative in these appeals, Mr. Mullen, who is also a principal of OSA and the broker at Winterbrook Realty, Inc. who handled the transaction. These multifaceted interests Mr. Mullen has as the Taxpayers' representative, the sales broker and a principal of OSA, the grantee, raise questions as to the independence and credibility of his assertions that such items are not realty but intangibles for which OSA must give ongoing, and yet undocumented, permission to be transferred. At some point, for the proper and efficient administration of property tax assessment, assessors and other public officials, including the department of revenue administration in its responsibility for equalizing values throughout the state (RSA 21-J:3 XII; RSA 21-J:9-a and RSA 74:18), must be able to rely upon the stated consideration prices, indicated by the transfer tax stamps and addressed by the PA-34 form. To allow taxpayers to develop a scheme in which they have full control as to the allocation of the total consideration price, makes the assessor's job unwieldy and subject to undocumented and unverifiable deductions.

The board recognizes OSA has structured access to the Owl's Nest Players Club and the Activity Center through a membership process, which clearly, according to the terms of the membership contained in Taxpayer Exhibit No. 7 – 04-03-07, are nontransferable with the sale of real estate without OSA's permission. However, the board finds Mr. Mullen's attempt to allocate a significant amount of each transfer price to those memberships is misplaced. First, the board's view of Owl's Nest development and the Owl's Nest website description (see Municipality Exhibit No. B – 04-12-07) of the golf course and general location clearly indicate the primary motivations to acquire property at Owl's Nest are the White Mountains/Lakes

Region location, the views and proximity to an excellent golf course. These factors (sticks in the bundle of rights) comprise the vast majority of the value reflected in the transaction prices. It should be noted that the golf course is open to the general public and membership in the Owl's Nest Player's Club only provides certain preferential "greens" fees, "tee times" and other similar discounts or benefits. Second, the ability and right to become a member of the Owl's Nest Player's Club and Activity Center (see Taxpayer Exhibit No. 7 – 04-0307) is available only to individuals who own property at Owl's Nest. Thus, one of the rights being acquired with the purchase of a property at Owl's Nest is the ability to access the memberships to the golf course and Activity Center. While OSA may have reserved for itself the ability to charge additional fees for such memberships, to date OSA has routinely granted such memberships at the initial sale of property at Owl's Nest. OSA has the ability in the future to charge subsequent owners at Owl's Nest for such memberships; however it appears that OSA is using this membership scheme as a marketing incentive during the initial sellout of the development. Admittedly, such a marketing scheme and bundling of property rights is notably different than the more common homeowner's association or undivided interests in common area arrangements that exist throughout the state and different from those that have been addressed in several supreme court decisions cited earlier. However, any individual interested in purchasing a destination house or condominium with locational amenities such as mountain views and proximity to a golf course facility could look at competing developments to Owl's Nest, such as Waterville Valley, Eastman (Grantham) and Maplewood Golf Estates (Bethlehem). If a purchaser perceives they are purchasing less than a full bundle of rights at Owl's Nest, that would put Owl's Nest at a competitive disadvantage to other similar developments. Based on the development pace and excellent quality of the improvements and dwellings at Owl's Nest, however, the board finds no

indication the buyers are expecting anything less than access to the golf course and Activity Center despite title to them being retained by OSA.

Additional intangibles itemized in Taxpayer Exhibit No. 8 – 04-03-07 relate to the ability of the site and improvements to function as a condominium unit. The architectural fee allowances, the “as built” floor and site plan allowances and waiver of water system hook up availability fees are “specialized intrinsic features”, which relate to the functionality of the condominium. Appeal of Town of Plymouth, 125 N.H. 141,145 (1984). The allowances and waivers are part of the stages or features of the development process that add sticks to the bundle of rights being purchased by the Taxpayers. They have to occur for a condominium to be operable and occupied. The fact OSA has bundled them as part of the initial sale prices does not change their inherent real property nature.

Further evidence that the sale prices are indicative of real property value is the fact Meredith Savings Bank, which financed most of the Taxpayers’ purchases of lots and sites, typically financed at 80% of the transaction price. This is evident both in the Taxpayers’ testimony and in the various purchase and sale and closing documents submitted by both parties. No appraisal performed on behalf of Meredith Savings Bank to support their lending activities for these various properties at Owl’s Nest was submitted by the Taxpayers. However, the board did notice during deliberations that several of the submitted closing documents indicate appraisals were performed by Loon Point Appraisal on behalf of Meredith Savings Bank. The board can only assume Meredith Savings Bank, acting as a prudent lender in compliance with the banking standards and regulations had such appraisals prepared to justify its level of lending (80%) of the total real estate rights being transferred and further that such appraisals relate to the valuation of real, not personal property.

And last, the board gives no weight to the four sales in 2005 and 2006 for \$55,000 of Green Scapes sites. These sale prices are approximately half the price of prior Green Scape site sales and were, based on the testimony of Mr. Mullen, an allocation of the rights being transferred by deed for the site and the rights relative to the unit construction being created by a construction contract. Mr. Mullen stated this was done to reduce the property tax assessment basis and thus reduce OSA's tax liability for the inventory of unsold sites. The documents submitted (Taxpayer Exhibit Nos. 5 and 6 – 04-12-07), indicate the prior transaction price of approximately \$110,000 had been split to be \$55,000 for the site with the architectural fee, water hook up availability charge, septic system hook up and Owl's Nest Player's Club Membership being transferred forward to the construction contract price (see closing memorandum in Taxpayer Exhibits Nos. 5 and 6 – 04-12-07) as a way to avoid property taxes for OSA's inventory of undeveloped duplex condominium sites. As further discussed in the companion decision in Docket Nos. 21244-04PT and 22474-05PT, and incorporated herein by reference, the \$55,000 alleged sale price does not comport with usual market land to building ratios while the earlier sale price of \$110,000 does. Further, the board notes such allocation is done at the sole discretion of OSA and is only applicable to the Green Scapes units because lots at Haartz Intervale and stand-alone condominium sites at Link Side have the ability to contract with builders other than OSA. Last, as noted in the spreadsheet on pages 12 and 13, the total cost of construction at Green Scapes for similar two and three bedroom units does not change significantly (with the exception of minor modifications noted by Mr. Mullen at hearing) and thus, it is clearly seen that the allocation is arbitrary and not market related.

The Taxpayers' second general argument was the condominium sites at Link Side and Green Scapes are significantly smaller than the average lot size at Haartz Intervale and the Town

utilized different base rates and yet arrived at similar values. The Taxpayers graphically noted the size difference between the Haartz Intervale lots and the condominium lots in Taxpayer Exhibit No. 4 – 04-03-07. The Taxpayers argued the Town’s base rate of \$34,000, as utilized in Haartz Intervale, should be utilized at Link Side and Green Scapes rather than the \$85,000 base rate employed by Avitar. The board finds the Taxpayers’ argument is groundless and does not recognize the governing tenet of proportionality, that property be assessed relative to market value. See RSA 75:1.

When assessing property utilizing a computer assisted mass appraisal system, assessors develop “assessment models” (land base rates being one of them) which are reflective of the primary motivating factors observed from market data (sales) and are applied in common units of comparison such as acres, square feet or gross living area of buildings. While these units of comparison usually relate to physical dimensions, they are trying to capture the tangible and intangible real property rights of use and enjoyment that are embodied in the physical features of real property. As a consequence, the right to build a dwelling and enjoy all the associated situs amenities can be encompassed on a lot of 10 acres or in a condominium lot of 0.10 of an acre. These primary site rights often have very similar value with the excess area or acreage having incrementally nominal additional value. In Haartz Intervale the lots were created by a prior developer and are several acres in size. There the Town utilized a primary base rate of \$34,000 for the primary one acre site and any additional supplemental land at \$1,800 per acre. The lots at Haartz Intervale have the right to be built upon as a single-family dwelling, enjoy the views as they exist, are in close proximity to the Owl’s Nest golf course and have access to memberships in the Owl’s Nest Player’s Club and the Activity Center. Condominium sites at Link Side and Green Scapes are much smaller averaging just over 0.10 of an acre in size. Those sites were

assessed by the Town at \$85,000 for a standard condominium site which appears to be 0.2 acres in size based on a review of the available assessment-record cards. However, the condominium sites at both Link Side and Green Scapes encapsulate nearly identical property rights as the larger Haartz Intervale lots. The condominium sites have the right to build, provide views, are in close proximity to the golf course and provide access through memberships to the Owl's Nest Player's Club and the Activity Center. Thus the fact the Town has chosen to have different base rates for condominium sites in Owl's Nest versus single-family lots in Owl's Nest is not evidence of disproportionality but just the opposite. For the Town's assessment model to be reflective of the sale prices of condominium sites, much higher base rates relative to lot/site size are necessary to reflect market value. Further, as the Town testified, not only do the base rates vary to account for the concentration of property rights in a smaller area, but doing so also allows the major land adjustment factors (e.g., undeveloped versus developed, views, topography, etc.) to be of similar magnitude regardless of the form of land subdivision. The ability for condominium sites to be much smaller than single-family sites is due to their common areas, roads and septic systems which are shared with other sites within their respective villages. For example, the Link Side lots are benefited by easements on areas of the golf course for portions of the septic leach fields and the value for that right is contained in the Link Side "land" value.

While the board acknowledges taxpayers may have difficulty understanding the different formulas and assessment models used by assessing firms, the board finds, in this case, Avitar provided clear explanations of the reasons for the land base rate differences and that they are directly market related.

The Taxpayers also argued the Town had assessed the lots on the east side of Link Side similar to those on the west side, without noting and making a distinction that those on the west

side have superior mountain views. The board noted during hearing, based on the abatement documents submitted, the Town did correct that error and made the distinction of the inferiority of the views on the east side of Link Side, by granting abatements to those properties. Thus the board finds the Town's revised assessments appropriately recognize this market distinction.

The Taxpayers also argued the latent highway noise from Interstate 93, the close proximity of buildings and easement to the benefit of the golf course, all negatively affect the market value of the Appealed Properties. Because the assessments were derived from sales of properties within Owl's Nest and to the extent the market distinguishes for those factors, they are inherent and reflected in the sale prices on which the assessments are based. Thus no further adjustment is necessary.

In conclusion, the board acknowledges the development scheme of Owl's Nest is ingenious and unique and in some aspects different from unit owners or homeowners associations addressed in RSA ch. 356-A and 356-B and existing case law. Nonetheless, after considering all the evidence, the board finds the Taxpayers failed to show the assessed values were disproportionate to market value. The primary market influences are the Appealed Properties' desirable location, views and proximity to an excellent and scenic golf course and the right, not available to the general public, to become members of the Owl's Nest Player's Club and the Activity Center. The board finds the memberships given at time of transfer were primarily marketing incentives and had nominal or no affect on the consideration price as shown by the subsequent sales and the financing of the Appealed Properties. The amount of the intangibles the Taxpayers argued should be deducted from the selling price was not independently documented as to their value and, in some instances, the intangibles were clearly real property rights.

Because the Owl's Nest development is partially in the Town of Campton and notwithstanding any settlements that may have been reached relative to properties in Campton, a courtesy copy of this decision is being sent to the Campton Selectmen for any effect it might have on subsequent year assessments in Campton.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Kelly M. Wieser, Esq., Wieser Law, PLLC, PO Box 1528, 438 NH Route 49, Campton, NH 03223 and Thomas N.T. Mullen, c/o Owl's Nest Golf Club, PO Box 470, Campton, NH 03223, Taxpayers' Representatives; Gary J. Roberge and David S. Woodward, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Contracted Assessing Firm; and Chairman, Board of Selectmen, Town of Thornton, 16 Merrill Access Road, Thornton, NH 03223.

Date: October 12, 2007

\_\_\_\_\_  
Anne M. Stelmach, Clerk