

**Greg MacArthur and Robert MacArthur**

**v.**

**Town of Wolfeboro**

**Docket No.: 23370-07PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$1,419,600 (land \$1,123,600; building \$296,000) on Map 241/Lot 45, a single family home on 0.615 acres on Lake Winnepesaukee (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was 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 Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the assessment increased by 36% from the 2003 assessment, a greater increase than the Town-wide average;
- (2) Maxfield Realtors, in a marketing letter, indicates the “average sale price for residential properties in Wolfeboro decreased by more than 15%” in 2007;

- (3) the Property's lot is 0.425 acres smaller and has 80 less feet of frontage on Lake Winnepesaukee than the abutting property's lot ("Mulloy"), and yet is assessed for only \$51,900 less than the Mulloy lot indicating the Town's "land curve" has no relevance;
- (4) the Town's use of four waterfront sales on Sewall Point are inadequate to determine what the "norm" market value is for the other 46 properties that did not sell on Sewall Point; and
- (5) the assessment should be reduced to \$1,242,500 by making the land assessment 15% lower than the Mulloy land assessment.

The Town argued the assessment was proper because:

- (1) the Town conducted a statistical update for 2007 utilizing existing physical data listings checked by an exterior "curb-side" review;
- (2) the assessments for properties increased by differing amounts from the last revaluation in 2003 and the fact the Taxpayers' percentage increase exceeded the Town-wide average increase is not proof of disproportionality;
- (3) a review of the department of revenue administration's ("DRA") median ratios from 2003 through 2006 indicated in general the Wolfeboro real estate market was increasing; however, the slight increase in the median ratio from 2007 to 2008 (98.1% to 99.7%) indicates a less than 2% decline in the overall market value of Wolfeboro properties between April 1, 2007 and April 1, 2008;
- (4) a number of sales of higher priced property (over \$350,000 of both waterfront and non-waterfront) indicate that these higher valued properties, however, continued to increase in value subsequent to the 2007 assessment date;
- (5) in particular, waterfront property has continued to sell more than the 2007 assessed values indicating the real estate market has continued to increase for such properties; and

(6) residential land sales normally indicate market value of a lot does not increase in direct proportion to lot size; rather, the market generally recognizes the bulk of a lot's value is in the ability to construct a dwelling (site value) with minimal additional value for supplemental land area or water-frontage.

### **Board's Rulings**

The foundation for taxation in New Hampshire is found in Part I, Article 12 and Part II, Article 5 of the New Hampshire Constitution that require every member of society contribute their share in support of government and that taxes levied to do so must be "proportional and reasonable." Further, RSA 75:1 establishes the basis for achieving proportional assessment is market value. Consequently, for a taxpayer to carry their burden, they must present market value evidence to support their claim of disproportionate/over assessment. In this case, the Taxpayers failed to carry their burden as their representative, Gregory W. MacArthur, presented no market value evidence at the hearing. That alone would be a sufficient basis for denying the appeal, however, the board will address further why the Taxpayers' bases for appeal are without merit.

First, the Taxpayers argued their assessment increased at a greater percentage as a result of the 2007 statistical update than the average Town-wide increase. As the Town properly noted, increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for an abatement since 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 that has changed in value. The Town statistical update complies with RSA 75:8 and is intended to remedy past inequities and, thus, the new assessments will vary between

properties, both in absolute numbers and in percentages. Further, there was some testimony provided by Mr. Wiley that the Taxpayers' 2003 assessment may have been excessively abated and contributed to the greater than average percentage increase in the Taxpayers' 2007 assessment.

Second, the Taxpayers' comparison to the abutting Mulloy property is also inconclusive as evidence the Property is disproportionately assessed. Upon questioning, Mr. MacArthur suggested the Mulloy property may be underassessed relative to the market value. The underassessment of other properties does not prove the over assessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). As noted at hearing, for the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. 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. Further, while there is no exact curve that applies to all land sales, the board agrees with the Town that in this case the bulk of the lot value is attributable to the ability to build a residence proximate to Lake Winnepesaukee. Additional land and frontage contribute some supplemental value but not in direct proportion to its size or amount. Several of the sales submitted by the Town support this contention (see November 1, 2007 sale of 268 Sewall Road and March 10, 2006 sale of 106 Sewall Road). Both these properties sold for more than the assessed value and had similar or less land area than the Property. Again, the Taxpayers did not present any contrary market evidence to support their argument of a greater land value differential between the Property and the Mulloy property.

Third, the Taxpayers asserted that it was “pretty much a fact” that the market value for the Property had declined based on information in the Maxfield Realtors’ marketing letter submitted with the appeal. We disagree. To the contrary, the facts submitted by the Town (Municipality Exhibit B), and Mr. Wiley’s testimony relative to DRA’s ratio changes both indicate that higher valued property, including waterfront property, had continued to appreciate in value in 2007. Mr. Wiley’s stratification of sales (Municipality Exhibit B) that occurred between July 1, 2007 and February 20, 2008 clearly indicate lower valued properties (less than \$350,000 sale price) did decline in market value (91% of assessed values) but properties in excess of \$350,000 (even excluding waterfront sales which appreciated at a higher rate) were selling on average 114% of their assessed values. All the documentary evidence submitted and Mr. Wiley’s testimony as to the relative market appreciation as indicated by the DRA median ratio changes supports the Town’s assertion that waterfront properties continue to appreciate and does not support the Maxfield Realtors’ generalization that sale prices had dropped by 15%. There is no evidence in the record to support that such a conclusion is applicable to the Property.

Fourth, the subsequent sales in Municipality Exhibit B also discredit the Taxpayers’ assertion that the four Sewall Point sales utilized by the Town during the 2007 statistical update did not establish the “norm” market value for the unsold properties. In fact, all the evidence submitted indicates, in general, waterfront properties are selling in excess of the assessed values.

In conclusion, the board finds the Taxpayers submitted no market evidence to support their requested abatement and the Town presented convincing market sales that occurred both before and subsequent to the update to support the proportionality of the assessment.

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(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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Greg MacArthur, 9 Proctor Drive, Topsfield, MA 01983 and Robert MacArthur, Box 262, Wolfeboro, NH 03894, Taxpayers; Chairman, Board of Selectmen, Town of Wolfeboro, PO Box 629, Wolfeboro, NH 03894; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: June 3, 2009

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Anne M. Stelmach, Clerk

**Greg MacArthur and Robert MacArthur**

v.

**Town of Wolfeboro**

**Docket No.: 23370-07PT**

**ORDER**

This order responds to the Taxpayers' June 24, 2009 "Rehearing Request", which is denied. The Rehearing Request presents no compelling procedural or substantive basis as to how "the board overlooked or misapprehended the facts or the law..." in its June 3, 2009 decision ("Decision"). RSA 541:3; Tax 201.37 (e). The Rehearing Request is largely a restatement of the Taxpayers' arguments previously raised at hearing which the Decision sufficiently addressed. See Appeal of Nashua, 138 N.H. 261, 263-64 (1994). Therefore, no rehearing or reconsideration is warranted.

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

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Paul B. Franklin, Chairman

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Date: June 29, 2009

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Anne M. Stelmach, Clerk