

**Bradley and Karen Wolff**

**v.**

**Town of Moultonborough**

**Docket No.: 23996-08PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$344,800 (land \$123,700; building \$221,100) on Map 107/Lot 043, a single family home on 2.25 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) it is disproportionate in relation to its market value and in assessments Town-wide;

- (2) the Property has water access to Wakonda Pond; a comparison of assessments of the neighborhood properties with Wakonda Pond as well as neighbors without access indicate the Property is overassessed;
- (3) housing values have declined from 2007 to 2008 and an increase in the 2008 assessment is not in relation to the market decline; and
- (4) a more proportionate assessment value of \$304,800 is reasonable.

The Town recommended reducing the assessment to \$326,600 as a result of its determination the home was not of A+20 quality but rather was an A+10 quality; the Town argued the revised assessment was proper because:

- (1) all data on the house is accurate based on an inspection of the Property;
- (2) the original assessment was arrived at based on sales which occurred between April 1, 2007 and April 1, 2008;
- (3) an analysis of three sales which occurred in 2007, one with access to Wakonda Pond and two with access to Lake Winnepesaukee, when adjusted for differences in size, location, age and condition support an indicated market value of \$338,600; and
- (4) the indicated market value, when equalized by the 2008 equalization ratio of 96.8% suggests an assessed value of \$327,800 (rounded).

The parties agreed the level of assessment in the Town was 96.8% in tax year 2008, the median ratio computed by the department of revenue administration (“DRA”).

### **Board’s Rulings**

Based on the evidence, the board finds the proper assessment to be \$326,600 as recommended by the Town. The abated assessment is based upon reducing the quality grade of

the dwelling from a “Average +20” to an “Average +10” as was calculated by the former Town assessor, Craig Nichols.

The Taxpayers presented no compelling market data from which to determine the market value of the Property. To carry their burden, the Taxpayers should have made a showing of the Property’s market value. This value would then have been compared to the Property’s assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). The Taxpayers primary argument was the increase in their assessment in 2007 to 2008 was contrary to both the average change in assessments in the Town and the general market decline from 2007 to 2008. While this change certainly raises a legitimate question, without better market evidence, the board finds there is no basis to grant a further abatement. Evidence of a declining market alone is not a basis for reducing an assessment no more than evidence of an appreciating market is a valid basis of increasing an assessment. The issue is proportionality. The Taxpayers need to make a showing that the Property has changed in value to a greater extent than that indicated by the change in the general level of assessment in the Town as a whole to prove the Property is disproportionately assessed.

While the board is not granting any further abatement, this appeal raises two issues the Town in particular should be mindful of.

First, the Town was represented at hearing by Kevin T. Leen of Vision Appraisal Technology who testified that his company was performing annual market analyses and assessment updates to maintain assessment equity. As a consequence, each year new values and the supporting assessment-record cards are created. In the case of the Taxpayers’ Property, the

update in 2008 increased both the unit price and site index factor for the primary building site resulting in a nearly \$20,000 increase in the land component of the assessment. At the same time, the depreciation factor on the dwelling of -15% in 2007 changed to -9% in 2008. Mr. Leen testified that these assessment model changes were the result of Vision's multiple analyses by property stratification (i.e., colonials, ranches, capes, water front access properties, etc.) This process, however, is not sufficiently transparent so as to be readily understood by either the board or the Taxpayers. The board has held in a line of reassessment orders that reassessment documentation, including annual updates, should be in a format that shows how the basic assessment models were derived from the market and consistently applied throughout the municipality. See Town of Columbia, BTLA Docket No.: 18361-00RA, Order dated August 24, 2004; Department of Revenue Administration v. Town of Winchester, BTLA Docket No.: 18412-00RA, Order dated January 7, 2005; and Town of Orford, BTLA Docket No.: 21473-05RA, Order dated November 3, 2005. Specifically and as an example, it is counterintuitive that the market for relatively new colonial style dwellings, such as the Taxpayers, would in the market be perceived to have 6% higher value (6% lower depreciation) when no improvements have been done to the dwelling other than routine maintenance and the dwelling is one year older. While the board is mindful that the burden on appeals is with the Taxpayers, the Town presented no documentation as to why this decrease in depreciation occurred other than the assertion by Mr. Leen that the sales analyzed indicated a change was necessary in the depreciation schedule. The board understands the methodology that Vision and other firms employ in performing annual assessment updates in municipalities throughout New Hampshire. We recognize that at times the analysis of improved sales, when stratified by property type or location, result in the change and interplay of both the land and building assessment models.

However, the resulting correlation to the models utilized throughout the Town should have some semblance of logic and adherence to appraisal principles. We question whether a 40% decrease in depreciation (-15% to -9%) makes sense during a time of a static if not declining market and with no evidence of significant renovations, repairs or improvements to the Property.

Second, at the close of the hearing, the board requested Mr. Leen to obtain from the Town assessment-record cards that reflected the abated recommendation (by lowering the dwelling grade) made by Mr. Nichols for 2008 and apparently incorporated in subsequent year assessment-record cards. Mr. Leen did provide copies of the 2007, 2008 and 2009 assessment-record cards but was unable to locate or produce the recommended value change by Mr. Nichols for 2008. While the Town's property record card retention procedures may be compliant with the minimum standards set forth in RSA 33-A:3-a, CXII (retain "current and last prior reassessing cycle"), the board would encourage the Town and all municipalities to maintain pertinent historic record cards for all properties where outstanding abatements or appeals are pending. This process is helpful for taxpayers in understanding the assessment process and preparing abatement requests, assessing officials defending abatements and appeals and the board or superior court hearing the appeals. Regardless, in this case, the board was able to closely recreate the "Nichols" 2008 assessed value by reducing the dwelling replacement cost price per square foot by 10%. The board agrees that the photographs and building description contained in the record indicate that the Average +20 grade overstates the quality of the dwelling and thus the Average +10 is more appropriate as the Town has recognized in 2009.

In brief, while the Taxpayers' concerns raise questions as to the methodology employed by the Town, without further evidence of market value to prove disproportionality, no further abatement is warranted. Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003).

If the taxes have been paid, the amount paid on the value in excess of \$326,600 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.

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(a). 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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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Bradley and Karen Wolff, 82 Heatherwood Drive, Moultonborough, NH 03254, Taxpayers; Chairman, Board of Selectmen, Town of Moultonborough, PO Box 139, Moultonborough, NH 03254; and Kevin T. Leen, Vision Appraisal Technology, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: 8/9/10

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Anne M. Stelmach, Clerk