

**David and Lisa-Marie Mulkern**

**v.**

**City of Laconia**

**Docket No.: 24313-08PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2008 assessment of \$599,500 (land \$332,700; building \$266,800) on Map 21/Lot 253-15, a single family home on 0.48 acres (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 Property is on Lake Winnisquam and abuts property in the Town of Meredith, where waterfront property assessed values are substantially less;

(2) for example, the property at 91 Collins Brook Road in Meredith has a much lower land value (\$187,100) and a much lower total assessment (\$407,800) than the Property even though both are on the same side of the lake, have similar water frontage and are on the same street (Leighton Road in the City becomes Collins Brook Road in Meredith);

(3) the house on the Property, built in 1960, had an addition constructed in 2003, but only has two bedrooms and two bathrooms, compared to the newer and larger houses cited by the Town as comparables;

(4) the City has not had a full revaluation since 1989;

(5) the tax “burden” in Laconia (due to higher assessments compared to Meredith) drives the market value of the Property down; and

(6) based on an estimate of what the land would be assessed for if the Property was located in Meredith (\$164,700), the assessment should be abated to \$431,500.

The City argued the assessment was proper because:

(1) the Taxpayers have presented no market value evidence to establish the Property was disproportionately assessed;

(2) the City has done annual assessment updates since 1989;

(3) the 91 Collins Brook Road property had a land assessment of \$187,100 in 2008, but Meredith increased this land assessment to \$443,400 in 2009 as shown on the assessment-record card that has been submitted and this increase is evidence that Meredith “did something” to correct disproportionately low waterfront land assessments in this area; and

(4) the Taxpayers failed to meet their burden of proof.

The parties stipulated the level of assessment in the Town was 100.1% in tax year 2008, the median ratio calculated by the department of revenue administration.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The appeal is therefore denied.

Assessments must be based on market value adjusted by the level of assessment in the Town. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). In this appeal, the Taxpayers presented no evidence regarding the market value of the Property, such as an appraisal, testimony from a market expert such as a broker or even a sales analysis of their own to estimate market value.<sup>1</sup> Instead, they noted differences between the land assessment on their own waterfront Property and the land assessments on adjacent waterfront properties on the same lake (Winnisquam) in a neighboring town (Meredith). Using their own derivation of what the land should be assessed for if it was located in Meredith (\$164,700), the Taxpayers argue they are entitled to a substantial abatement (to \$431,500). The board disagrees and makes the findings presented below.

The Taxpayers have raised a question regarding why disparities seemed to exist in the land assessments in the City and the neighboring Town of Meredith in tax year 2008. Simply raising this question, however, without presenting market evidence regarding the value of the Property as a whole (land and building), is not enough to meet their burden of proving disproportionality. See, e.g., Appeal of Walsh, 156 N.H. 347, 356 (2007) (even if a taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, he or she still has the burden of proving the aggregate value of the property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement).

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<sup>1</sup> One of the Taxpayers, David Mulkern, alluded during his testimony to a "refinancing appraisal" of the Property in the Fall of 2009. Although he did not present this appraisal as evidence, he stated the appraisal estimated the market value of the Property to be \$490,000. This value is higher than the abated value the Taxpayers are seeking in this appeal (\$431,500) for tax year 2008.

After the hearing, the board asked one of its review appraisers, Cynthia L. Brown, CNHA, to conduct an investigation and file a report on the apparent land value assessment differences between the municipalities to obtain a fuller understanding of the sole basis of the appeal. Ms. Brown filed her report (the “Report”) on July 7, 2010 and the parties were given fourteen (14) days to file any comments they may have in response to the Report.

As noted, the properties at issue are on Lake Winnisquam, a large and long lake bordering five municipalities (Laconia, Meredith, Sanbornton, Belmont and Tilton). Each municipality is charged with the responsibility of maintaining proportional assessments for the properties located within it, including those along the waterfront.

The Report indicates Meredith performed its last full reassessment in 2006. In subsequent ratio studies, however, Meredith officials came to recognize “some classes of property and neighborhoods were not at the same percentage of market value as the overall town.” (Report, p. 1.) For example, there were discrepancies in proportionality between the east and west sides of the lake, with those on the east side (adjacent to the Property and on Collins Brook Road) assessed lower relative to their market values. In response, the Town performed a valuation update in 2009. Ms. Brown notes properties on the east side of Meredith (adjacent to the Property and on Collins Brook Road) had “a significant increase in the land portion of their assessments as a result of the 2009 update.” (Id.) In some instances, this increase was as much as “100%.” (Id.) As noted above, the Town presented undisputed evidence Meredith increased the land assessment on 91 Collins Brook Road by well over 100% (from \$187,100 in 2008 to \$443,400 in 2009) and this Property sold in August, 2008 for \$740,000.

The Taxpayers are contesting the tax year 2008 land assessment on the Property by comparing it to 2008 land assessments in Meredith. The Report indicates, however, that those

land assessments were not proportional to market value and were corrected by Meredith through the 2009 valuation update. At best, the Taxpayers' argument boils down to one where they claim the Property is entitled to an abatement because of the underassessment of other properties. The underassessment of other properties, however, is not a valid ground for an abatement because it does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

The Taxpayers noted in their arguments the last full reassessment in the City was in 1989. The City has performed annual updates to keep up with changing values. There is no evidence the City has not maintained a reasonable level of assessment equity by following this practice. In tax year 2008, for example, the level of assessment in the City (measured by the median ratio of 100.1%) was close to the "goal" of 100% mentioned by the City's assessor in his testimony. According to the Report (p. 2), the City is performing a complete revaluation of all properties in 2010 and such a revaluation should help the City maintain assessment equity. The 2008 median ratio of 100.1% is some indication the City was assessing properties at close to their estimated market values. The fact that 91 Collins Brook Road sold in August, 2008 for \$740,000 is also supportive of the equalized value indication of the Property (approximately \$600,000) for tax year 2008.

In summary, the Taxpayers failed to meet their burden of proving the tax year 2008 assessment on the Property was disproportional. The appeal is therefore denied.

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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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David and Lisa-Marie Mulkern, 536 Leighton Avenue, North Laconia, NH 03246, Taxpayers; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: 8/6/10

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Anne M. Stelmach, Clerk