

**Kennett R. & Patric Kendall Jr.**

**v.**

**Town of Durham**

**Docket Nos.: 12971-92PT & 14594-93PT**

**DECISION**

The board has previously granted the "Taxpayers'" motion to consolidate the 1992 and the 1993 tax years. Consequently this order addresses both years.

The Taxpayers appeal, pursuant to RSA 76:16-a, the following assessments: 1992 - \$802,909 (land \$197,609; buildings \$605,300) and 1993 - \$882,036 (land \$183,536; buildings \$698,500). The "Property" consists of a dwelling, partially complete in 1992 and fully complete in 1993, on a 17.2-acre lot on Great Bay. 14.2 acres were assessed in current use (RSA 79-A:5) and 3 acres were assessed at market value (RSA 75:1).

The Taxpayers and the "Town" waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair

Page 2

Kendall v. Town of Durham

Docket Nos.: 12971-92PT & 14594-93PT

and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessments were excessive because:

**1992**

- 1) the Town's high grading of the quality of the house results in an excessive square-foot base rate;
- 2) the house materials and workmanship, while of excellent quality, are standard and are not custom designed;
- 3) the Town's size adjustment does not adequately recognize the economies of scale of the large size of the house; and
- 4) some of the extra features and outbuildings were not adjusted to recognize that the Property was still under construction as of April 1, 1992.

**1993**

- 1) the Town's calculation of living area square footage is incorrect compared to the architect's estimate; and
- 2) a lot two down from the Property received a 25 % adjustment to the house site for the long access and because the Taxpayers' site also has a long access, it should receive the same adjustment.

The Town argued the assessment was proper because:

**1992**

- 1) the house is superior to any of the Taxpayers' comparables due to multiple hot water and hot-air heating systems, extensive plumbing (six baths), complete sprinkler system, built-in cabinets, cherry kitchen, wainscoting, etc; these

features justify the "Luxurious" grade;

Page 3

Kendall v. Town of Durham

Docket Nos.: 12971-92PT & 14594-93PT

2) in addition to the Property having the lowest size adjustment factor of the comparables, an additional 10% functional depreciation was applied for the house being overbuilt;

3) the unfinished nature of the extra features and outbuildings were considered in determining the 30% unfinished factor;

4) in 1993, the Town dropped the luxurious grade to excellent +20 as part of a town-wide assessment based on a new sales analysis and adjustment of base rates;

5) eleven waterfront sales from 1988 to 1994 indicate the equalized assessments were generally lower than the sales prices; and

6) the Taxpayers' 1991 building permit estimated the cost of construction to be \$700,000.

### **1993**

1) the Taxpayers incorrectly compared the architect's estimate of living area to the Town's gross square-footage calculation; the comparison should be made to the effective square footage, which reflects the effect of story height on living area; this proper comparison shows the Town calculated 6,424 square feet of living area compared to the architect's calculation of 6,705 square feet;

2) the site adjustment for access made to the lot two away should not apply to the Taxpayers' Property because the Taxpayers' drive is partially paved and the adjustment to the other lot was incorrect and excessive;

3) the 1994 sale of a smaller and inferior house on a smaller lot on Oyster River for \$670,000 supports the assessment; and

4) two sales of vacant waterfront lots, when the \$700,000 estimate of construction is added to them, support the assessment.

Page 4

Kendall v. Town of Durham

Docket Nos.: 12971-92PT & 14594-93PT

### **Board's Rulings**

The board finds the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The board's findings and rulings will be separated by tax year because the

Property was partially constructed in 1992 and fully constructed in 1993 and further because the Town underwent an assessment update for 1993, resulting in a significantly different level of assessment. Neither party contested the department of revenue administration's equalization ratio as being representative of the level of assessment for each year. Therefore, the board finds that the general level of assessment in 1992 was 127% and in 1993 was 98%.

### **1992**

The board finds the Taxpayers failed in their burden because they presented no market data to substantiate a lower assessment. The Taxpayers' argument focused primarily on a comparable assessment analysis and on attacking the Town's methodology. The board finds the comparables relied upon by the Taxpayers were indeed not comparable due to superior quality and larger size of the Property. Further, no photographs of either the comparables or the interior of the Taxpayers' house were submitted to support the Taxpayers' contentions. While the board found some of the Town's adjustments for

unfinished status of the extra features and the calculation for the overbuilt nature of the Property questionable, the resulting assessment relative to the market evidence submitted by the Town did not show the assessment was disproportional.

The Taxpayers arrived at an average rate of the effective building area from averaging the 10 comparable properties. However, averaging building values does not necessarily prove "disproportionality"; it only proves that the

Page 5  
Kendall v. Town of Durham  
Docket Nos.: 12971-92PT & 14594-93PT

Taxpayers' building is assessed more than the average property. In this case, the board found that there was more than adequate evidence to indicate that it should be assessed more than the average.

The Taxpayers raised concerns about certain errors in the assessment. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

For the Taxpayers to prove disproportionality they needed to present evidence of market data. However, they did not. A review of the file and the Town's submittal to the board indicates the unimproved land was purchased by the Taxpayers in June of 1989 for \$500,000. In 1991, a building permit was issued based on an estimated construction cost of \$700,000. The Taxpayers never submitted any of this evidence. In fact the Taxpayers responded on the board's questionnaire relative to recent purchases and improvements to the Property with "N/A". Further, the Town's evidence of the cost of construction at \$700,000 was never refuted by the Taxpayers. The board is aware that cost

does not always equal value and that the real estate market in 1989 was generally better than in 1992 and 1993. However, such basic evidence of value needs to be considered and is given some weight by the board.

The board finds that the Town's land and building assessment compared to the Taxpayers' 1.2 million dollar investment in the Property is reasonable. First, the land assessment without current use would have been \$273,900 at the 127% level or approximately \$216,000 when equalized ( $\$273,900 \div 1.27$ ).

Comparing Page 6  
Kendall v. Town of Durham  
Docket Nos.: 12971-92PT & 14594-93PT

this to the Taxpayers' purchase price in 1989 of \$500,000 indicates that the Town has realized that the market has dropped and/or the Taxpayers overpaid compared to the general market for the Property. Second, the unrebutted \$700,000 construction estimate, if adjusted for being 70% complete as of April 1, 1992 and adjusted by the 127% general level of assessment in 1992, indicates an assessed value of \$622,300, which supports the Town's assessed value of \$605,300.

### **1993**

The board finds the Taxpayers similarly ignored all 1993 market data. The Taxpayers' investment of 1.2 million dollars in the Property is similarly given weight by the board in 1993. The Town in 1993 would have assessed the Property at \$927,500 without the consideration of current use. Comparing this to the Taxpayers' investment and to the adjustments made on the card (specifically the 10% for the overbuilt nature of the house) indicates the Town recognized the market in 1993 would not have recaptured the Taxpayers' entire investment. Further, the Town submitted sales of an improved property and two waterfront lots, which generally support the assessment.

The board finds the Town's effective living area calculation does adjust for the story height's effect on living area. The effective area estimated by the Town at 6,424 square feet versus the architect's estimate of 6,705 square feet shows the Town, if anything, slightly underestimated the first and second floor living area. This underestimate offsets any overestimation of the basement finished area, which the Town assessed at a lower effective rate.

Lastly, the board agrees the adjustment for access the Town gave to a neighboring lot does not justify a similar adjustment to the Taxpayers' lot. The Taxpayers did not show how the partially paved long drive would be a

negative Page 7

Kendall v. Town of Durham

Docket Nos.: 12971-92PT & 14594-93PT

factor the market would consider for a large-exclusive-private-waterfront property such as the Taxpayers'.

In conclusion, the board notes the Taxpayers' arguments only dealt with assessment comparability and methodology. The Taxpayers chose not to disclose to the board the original cost to purchase the lot in 1989 and the actual construction cost. When the board considers the market evidence submitted by the Town, the purchase price of the lot and the estimate of construction cost, the board can only conclude the Taxpayers attempted to seek an abatement while ignoring the requirements of RSA 75:1. The Taxpayers' representative, Michael Cornelius, has been before the board on several occasions and has always presented himself as knowledgeable of taxation and assessment matters. Therefore, the board can only conclude that these appeals were frivolously brought and maintained and, therefore, would entertain a motion for costs from the Town. If the Town chooses to submit a motion for costs it should do so in accordance with TAX 201.39. (Copy attached.)

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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(e). Filing a reconsideration motion is a prerequisite for appealing Page 8  
Kendall v. Town of Durham  
Docket Nos.: 12971-92PT & 14594-93PT

to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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, Member

\_\_\_\_\_  
Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael Cornelius, representative for the Taxpayers; and Chairman, Selectmen of Durham.

Dated: March 22, 1995 \_\_\_\_\_

0006

Lynn M. Wheeler, Deputy Clerk