

Michael McClurken and Jacqueline Eastwood

v.

Town of Durham

Docket No.: 20212-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$2,338,900 (land \$395,500; buildings \$1,943,400) on Map 23, Lot 13, a single-family residence (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) an independent appraisal estimated the Property’s market value on April 1, 2003 at \$1,800,000; and

(2) the Property's improvements are a superadequacy for the neighborhood and the cost to construct is not an accurate market value indicator.

The Town argued the assessment was proper because:

(1) the Taxpayers' appraisal is flawed in several areas and should be given little weight; and

(2) an analysis using comparable sales estimated the Property's market value at \$2,500,000 on April 1, 2003.

The four cases heard on December 22, 2005 (Michael McClurken and Jacqueline Eastwood v. Town of Durham, Docket No.: 20212-03PT; Kennett R. and Patricia C. Kendall v. Town of Durham, Docket No.: 20215-03PT; Roger and Heather Ann Cloitre v. Town of Durham, Docket No.: 20218-03PT; and Gerhard and Inge Brand v. Town of Durham, Docket No.: 20220-03PT) involved the same municipality and the same Taxpayers' representative in each case. The parties agreed that due to the similarity of the issues in the four cases, and in lieu of repeating duplicative testimony, the board could take official notice (RSA 541-A:33, V) of the evidence and testimony given in the four proceedings. Therefore, the board's ruling in each case considers the testimony and evidence given in all the cases heard that day.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry their burden of proof to prove the Property was disproportionately assessed.

The Taxpayers were represented at the hearing by Christopher Snow from Property Tax Advisors, Inc. Mr. Snow submitted an "Appraisal" performed for him by Elizabeth W. Brown a New Hampshire certified residential appraiser. The Appraisal estimated the Property's market value on April 1, 2003 to be \$1,800,000.

At hearing, Mr. Snow testified the Appraisal “speaks for itself” and is the basis of the Taxpayers’ appeal. Several questions were raised during the hearing concerning the appraiser’s methodology and the reasoning behind some of the adjustments contained in the Sales Comparison Analysis grid. The appraiser, however, did not attend the hearing. In the Appraisal, the section entitled “Comments on Sales Comparison” contained many general statements but lacked specificity. For example, in the paragraph where the various adjustments made by the appraiser are listed, there is no explanation or basis of how the appraiser determined the magnitude of the adjustments.

The testimony was the Property’s dwelling is arguably the nicest house in the Town. It is located at the end of a cul-de-sac in a prestigious neighborhood and has a substantial amount of water frontage on the Oyster River. For this reason, the board finds the appraiser’s \$35.00 per square foot adjustment for differences between the gross living area of the Property’ dwelling compared to the gross living area of the houses of the comparable sales to be inadequate and does not fully capture the contributory value of the extra space. Further, given the description of the house and its quality of construction, the board finds the lack of an adjustment to the comparable sales for the “quality” factor to be perplexing. The appraiser rated the “quality” of the comparable dwellings as “similar” (except for comparable 5) and made no adjustment for quality of construction. While all the comparable sales are certainly above average quality, a review of the photographs and the assessment-record cards in Taxpayer Exhibit 1 indicate in most cases the comparables are inferior in quality to the Property. For example, the grade factors (with the exception of comparable 4 with a factor of 2.68) ranged from 1.51 to 1.73 while the Property’s dwelling had a factor of 2.62. While there may be some point where superior quality may become a superadequacy in the market, the board finds the lack of any adjustment for

clearly inferior quality comparables severely diminishes the reliability of the Appraisal's value conclusion. It is the board's experience that a prospective purchaser, if all the Appraisal's comparables were available for purchase, would assign some premium value for the Property's excellent design, fixtures and quality of construction as shown in the floor plans and photographs. Without the appraiser present at the hearing to respond to these questions and to explain her reasoning, the board gave the Appraisal's estimate of market value no weight during deliberations.

The board finds the testimony regarding the two sales at 12 Deer Meadow Road and 21 Deer Meadow Road to be some indication the Property is not disproportionately assessed. The property at 12 Deer Meadow Road sold in September 2005 for \$1,575,000 with its living area one half that of the Property and, subsequent to the purchase, \$360,000 was spent on renovations and an addition. The property at 21 Deer Meadow Road, with less than one half the Property's living area, sold in August 1999 for \$1,365,000. Subsequent to the purchase, a \$162,000 addition was completed according to the building permit. These sales are additional evidence there is a market, albeit a narrow one, for high-end homes of quality construction. The appraiser's comment that the Property's home was a superadequacy, due to its size, is not supported by adequate evidence given the two sales previously mentioned. The board acknowledges there was a paucity of sales in this market range but the two sales are some indication the Deer Meadow neighborhood is unique and contains very high quality homes.

The Town provided an analysis in Municipality Exhibit B that indicated the market value of the Property was \$2,500,000 on April 1, 2003. While the board need not concur specifically with the finding of the Town, in general, the board finds the Town's analysis supports the finding

that the Property is not disproportionately assessed. For the reasons discussed, the board finds the Taxpayers have not carried their burden of proof and the appeal is denied.

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: Christopher Snow, Property Tax Advisors, Inc., 56 Middle Street, Portsmouth, NH 03801, Taxpayer Representative; and Chairman, Town Council, Town of Durham, 15 Newmarket Road, Durham, NH 03824.

Date: 3/20/06

Anne M. Stelmach, Clerk