

Kennett R. and Patricia C. Kendall

v.

Town of Durham

Docket No.: 20215-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$1,918,219 (land \$412,000; buildings \$1,506,219) on Map 20, Lot 8-6 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 based on an independent appraisal and an appropriate time (market condition) adjustment of 8% per year the Property’s market value on April 1, 2003 was \$1,400,000.

The Town argued the assessment was proper because:

- (1) an analysis using comparable sales estimates the Property's market value on April 1, 2003 was \$2,100,000; and
- (2) the Taxpayers' appraisal is seriously flawed and should be given little weight as an indicator of the Property's market value.

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 prove the Property was disproportionately assessed.

At the hearing, the Taxpayers were represented by Christopher Snow, a tax representative from Property Tax Advisors, Inc. The basis of the Taxpayers' appeal is an "Appraisal" performed for the Taxpayers by Robin L. Shaw, a New Hampshire certified residential appraiser. The Appraisal estimated the Property's market value on October 10, 2001 at \$1,250,000. After a thorough review of the Appraisal and the testimony of Mr. Snow, the board finds it can give little weight to the value conclusion contained in the Appraisal for several reasons. First, the appraiser

did not attend the hearing and was unavailable for questioning or to explain any of the adjustments or lack thereof made in the Appraisal. For example, the Appraisal estimated the gross living area of the dwelling to be 6,301 square feet (Taxpayer Exhibit 1). The Taxpayers' representative submitted a sketch of the house, apparently taken from building plans, indicating the combined area of the first floor, excluding the garage and enclosed porch, and the second floor to be 6,932 square feet. The Town's assessment-record card, however, lists the living area at 7,744 square feet. Mr. Dix, testifying for the Town, stated he had measured the Property on several occasions, had reviewed the initial square foot calculation and was confident his final calculations were accurate. The board finds these widely divergent estimates support the Town's position that the Appraisal is flawed and is one reason the board can not give the Appraisal much weight.

In addition to the gross living area question, the board finds the lack of a time (market conditions) adjustment or any discussion pertaining thereto to be a fundamental deficiency in the Appraisal. Further, the appraiser's use of \$15.00 per square foot to adjust and account for the contributory value of the difference in gross living area between the comparable sales and the Property is unsupported. A \$15.00 per square foot adjustment is unrealistic and unheard of for a dwelling of this quality and for almost any home in the 2003 real estate market in the Durham area.

The Taxpayers' representative testified he did not speak with the appraiser and could not answer the questions raised about the appraiser's methodology or adjustments other than to say the appraiser was a certified residential appraiser and the estimate of value and the adjustments made to determine it were "just the appraiser's opinion." The board finds this statement combined with the appraiser's absence from the hearing prohibits the board from giving the

Appraisal's market value estimate any weight. Because the Appraisal was the basis of the appeal the Taxpayers have not carried their burden of proof and the appeal is denied.

The board need not rule on the merits of the Town's presentation given the Taxpayers' failure to carry its burden of proof with any probative market value evidence or testimony.

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: 3/16/06

Anne M. Stelmach, Clerk