

**Jesse and June Gangwer**

**v.**

**Town of Durham**

**Docket No.: 20216-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$606,800 (land \$205,900; buildings \$400,900) on Map 2-12-3, a multi-unit residential property utilized as a college fraternity (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 parties agreed the board could take official notice of the evidence in the prior case heard the same date, NH Beta Association of SAE v. Town of Durham, Docket No. 20211-03PT (“SAE appeal”), another fraternity appealed by the Taxpayers’ representative,

Mr. Christopher Snow (“Mr. Snow”). The parties also agreed the 2003 level of assessment was 98.6% based on the department of revenue administration’s 2003 weighted mean ratio.

The Taxpayers argued the assessment was excessive because:

- (1) an appraisal (“Marquis appraisal”) estimated the Property’s market value as of December 2003 at \$550,000;
- (2) the \$550,000 market value estimate equates to a \$113 per square foot market value indication similar to the \$112 market value indication in the SAE appeal; and
- (3) performing an income approach on the Taxpayers’ actual income and expenses indicates a market value of \$505,415.

The Town argued the assessment was proper because:

- (1) the Marquis appraisal arrives at a low estimate of market value because an inadequate time adjustment is utilized in the sales approach, 2300 square feet of finished area in the basement is not adequately accounted for and, in the income approach, the estimated rent of \$1625 per student per semester is below market;
- (2) the Taxpayers’ contract rents are significantly lower than actual market rents and thus do not provide a good indication of the Property’s market value by the income approach; and
- (3) the Property is located in a central business district allowing it to have alternative uses if at some point the use as a fraternity is no longer its highest and best use.

### **Board’s Rulings**

The board finds the Taxpayers did not carry their burden of proof in showing the Property was disproportionately assessed for the following reasons.

The Town’s assessment of \$606,800 when equalized by the stipulated ratio of 98.6% indicates an estimated market value of \$615,400 (rounded) as of April 1, 2003. The Marquis

appraisal estimated the market value at \$550,000 as of December 2003, less than \$100,000 lower than the Town's equalized assessed value, even if a reasonable time adjustment is applied back to April 1, 2003. For the following reasons, the board finds the Marquis appraisal understates the Property's market value.

First, as evidence submitted both in this appeal and the SAE appeal indicates, the estimated per student rent of \$1625 per semester is below market rent. The parties agreed in the SAE appeal that the semester rent of \$2220 per student was market and it was supported by the rents contained in the lease between SAE and another fraternity, Tau Kappa Epsilon Fraternity, Inc. (see lease at Article 3, part of Taxpayer Exhibit 1 in Docket No. 20211-03PT). If this rental rate is applied to the balance of the Marquis appraisal income approach assumptions, the result is generally supportive of the Town's assessment. The Marquis appraisal market rent basis is flawed because it is based both on actual rents received by the Taxpayers (which appear below market based on the stipulated market rents in the SAE appeal) and upon the rentals the University of New Hampshire charges in its non-taxable dormitory buildings. A more appropriate comparison would be as performed in the Brooks appraisal in the SAE appeal to look at non-university owned off-campus housing rental rates. Further, because the board finds the actual rents received by the Taxpayers appear to be below market, the capitalization of that income stream does not produce a credible indication of the Property's market value.

Second, two of the three comparable sales in the Marquis appraisal sales comparison approach are significantly smaller rental properties and thus not good market indices for the Property. Also, the comparable sales approach grid has very generalized and unsupported adjustments. Consequently, the value conclusion by the sales comparison approach is given little weight by the board.

Third, as the Town argued, the triple net lease referenced at paragraph 2 of Municipality Exhibit A of \$56,000 per semester (based on a 32 student occupancy) further indicates the Marquis appraisal and actual income capitalization underestimates the Property's income producing potential and its value.

This Property is located in the central business district which provides for a wider array of permitted uses unlike many other fraternities and sororities that are located in the RA residential district (see p. 10 of Marquis appraisal and p. 14 of Brooks appraisal part of Taxpayer Exhibit 1 in SAE appeal). This more expansive array of permitted uses by zoning enhances the market value of the Property because it allows alternative uses if rental as a fraternity becomes not economically viable.

In conclusion, sufficient shortcomings exist in the Taxpayers' evidence for the board to conclude the Taxpayers failed to prove the assessment is unreasonable, excessive or disproportionate.

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, 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: 2/14/06

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Melanie J. Ekstrom, Deputy Clerk