

Roger and Heather Ann Cloitre

v.

Town of Durham

Docket No.: 20218-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$1,486,100 (land \$388,300; buildings \$1,097,800) on Map 23, Lot 11 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) based on an independent appraisal the Property’s market value on April 1, 2003 was \$1,050,000; and
- (2) no interior inspection was performed by the Town.

The Town argued the assessment was proper because:

- (1) the Taxpayers' appraisal is seriously flawed in many areas; and
- (2) based on an analysis using comparable sales the Property's market value on April 1, 2003 was \$1,650,000.

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 Taxpayer's 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 of Property Tax Advisors, Inc. Mr. Snow submitted an "Appraisal" that had been performed for the Taxpayers by Jeffrey Wood of The Stanhope Group LLC. Mr. Wood, however, did not attend the hearing and was unavailable for questioning. Mr. Snow stated the primary basis of the Taxpayers' appeal was the estimate of value contained in the Appraisal.

A thorough review of the Appraisal reveals some flaws and inconsistencies. Some of these include the appraiser's inconsistent classification of the Property as either "average" or

“very good”, the use of \$25.00 per square foot for an adjustment for the contributory value of any differences in gross living areas between the Property and the comparable sales and the statements contained in the text addendum of the Appraisal concerning the adjustments for location to the comparable sales. The board will address these three individually.

First, the appraiser listed the Property in the cost approach section of the Uniform Residential Appraisal Report as “very good” quality and took the unit pricing apparently from the Marshall and Swift Residential Cost Handbook under the “very good” section. In the sales comparison analysis grid, however, the appraiser listed the Property as “average” under the quality of construction. The board finds the testimony from the parties to be that none of the homes in the Deer Meadow Road subdivision, where the Property is located, are “average” homes and the subdivision is considered to contain some of the highest quality, most luxurious homes in the Town. Further, the exterior photographs and the architect’s plans accompanying the Appraisal indicate the dwelling is significantly more than “average” quality. Therefore, the appraiser’s “average” grading of the home in the sales comparison approach does not accurately depict the quality of construction of the dwelling. This inconsistent grading coupled with the appraiser’s statement that the sales comparison approach was given the most emphasis in the final reconciliation is one reason the board can not give the appraiser’s estimate of market value much weight.

Second, the board finds the appraiser’s use of \$25.00 per square foot for the adjustment reflecting the contributory value of any differences in gross living area between the Property and the three comparable sales to be low given the good quality of the Property.

Third, the appraiser makes a location adjustment on the sales comparison analysis grid to comparable sales #2 and #3. In the text addendum, however, the appraiser, under the comments

on the sales comparison approach, writes “[a]n adjustment is made under location to Comps 1 and 2 for their inferior locations in neighborhoods where property values are mixed.... The adjustment to Comp 2 reflects consideration for is (sic) superior location on the Coheco River with access to deep water and its location in Dover where the tax rate is more attractive to buyers of large waterfront properties.” The board finds the appraiser’s statement regarding Comp 2’s superior location to be in conflict with the positive adjustment of \$100,000 made on the sales comparison analysis grid. A superior characteristic held in a comparable sale compared to the property being appraised would require a negative adjustment if truly the characteristic was superior to the appraised property. In contradiction to his written comments, the appraiser did not make any adjustment on the grid to comparable sale #1 for its location. The appraiser did, however, make a substantial adjustment to comparable sale #3 but made no explanatory comment in the addendum. An adjustment of the magnitude made to sale #3 warrants some justification.

It is unnecessary for the board to further review the Town’s testimony or submissions due to the Taxpayers’ failure to sustain their burden of proof. The board acknowledges the fact the Town did not inspect the Property. Some issues outlined by the Town, however, raise further questions concerning Mr. Snow’s efforts to prove the Property was disproportionately assessed such as, for example, the unexplained differences between the Property’s gross living area contained in the Appraisal (5327 square feet) versus the area listed on the assessment-record card (6067 square feet).

For the previously discussed reasons, the board finds the Taxpayers have failed to carry 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: 3/16/06

Anne M. Stelmach, Clerk