

**Gerhard and Inge Brand**

**v.**

**Town of Durham**

**Docket No.: 20220-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$506,300 (land \$316,200; buildings \$190,100) on Map 20, Lot 5 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 based on an independent appraisal that estimated the Property’s market value to be \$400,000 on April 1, 2003.

The Town argued the assessment was proper because an analysis using comparable sales estimated the Property’s market value on April 1, 2003 to be \$575,000.

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 Taxpayers' representative. 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 from Property Tax Advisors, Inc. Mr. Snow submitted an "Appraisal" prepared for the Taxpayers by Karen I. Oram and Peter E. Stanhope of The Stanhope Group LLC. The Appraisal estimated the market value of the Property to be \$400,000 as of April 1, 2003. After a thorough review, the board finds it can give little weight to the Appraisal for several reasons.

First, the appraisers did not appear at the hearing and were unavailable to answer any questions concerning the methodology used to appraise the Property. Further, the Taxpayers' representative did not have any conversations with the appraisers concerning either the magnitude of or the necessity for the various adjustments made in the Appraisal. Mr. Snow simply testified the market value estimate in the Appraisal was "the appraisers' opinion" and the basis for the appeal.

Second, the board finds the appraisers' lack of explanation, except for a very cursory statement regarding comparable sale #1, of their reasoning behind any time (market conditions) adjustment or the lack thereof to be a significant flaw in the Appraisal. It is a basic tenet of sound appraisal practice that a thorough consideration of the affect of market conditions (time) is made when comparing the date of the comparable sales with the effective date of valuation. The appraisers in this appeal did not present any information regarding this important factor other than the previously mentioned cursory statement regarding comparable sale #1.

Third, the Town's testimony regarding the Property's superior view conflicts with the appraisers' adjustments for this factor. Further, the photographs submitted with the Appraisal support the Town's assertion of the Property's superior view. The Taxpayers' dwelling is well-screened from Bay Road but has an expansive view across protected open fields to the wooded and open shoreline of Great Bay. In the Appraisal, comparable sale #1 is adjusted \$50,000 for a filtered, seasonal view compared to the Property's superior view. The Mathes Cove sales (comparables #4 & #5) were adjusted by \$65,000 to reflect the fact they did not have any water view enhancement. The nominal \$15,000 difference shown by the appraisers' adjustments between properties with no view and those with a filtered view does accurately capture the contributory value of a view. In the Town's analysis (Municipality Exhibit A), an adjustment of \$200,000 was applied to the 9 Mathes Cove property (comparable sale #5 in the Appraisal) for the lack of a view. Given the testimony and evidence presented the board finds the Town's view adjustment more accurately depicts the Property's location and the value the view contributes to the Property's market value.

Given the Taxpayers' failure to carry their burden of proof the board finds it unnecessary to review in depth the Town's submissions other than to note the fact the waterfront sales in the

Town that occurred subsequent to the assessment date (April 1, 2003) show waterfront property in general in the Town were not assessed excessively during the 2003 revaluation.

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

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Paul B. Franklin, Chairman

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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

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Anne M. Stelmach, Clerk