

#24109-08PT/24923-09PT, Karen M. Wooley
#24110-08PT/24922-09PT, Ernest G. Champagne
#24111-08PT/24936-09PT, Brian T. Gilmore
#24112-08PT/24929-09PT, Sharon Longey
#24113-08PT/24930-09PT, Charles K. and Patricia M. Grace
#24114-08PT/24931-09PT, Lina M. and Jeanne E. Ouellette
#24115-08PT/24938-09PT, Dorothy Freeman
#24116-08PT/24937-09PT, Daniel J. and Carolyn S. Hart
#24118-08PT/24942-09PT, Salvatore and Susan Moccia
#24119-08PT/24943-09PT, Mathew M. Dow and Katelyn Laroche
#24120-08PT/24945-09PT, Thomas B. and Catherine L. Johnston
#24121-08PT/24947-09PT, Joseph Tripaldi
#24123-08PT/24924-09PT, Francis M. and Nancy R. Keane
#24124-08PT/24926-09PT, Walter E. and Regina A. Vips
#24125-08PT/24927-09PT, James F. and Gloria J. Eldridge
#24126-08PT/24925-09PT, Susan P. Thompson
#24127-08PT/24928-09PT, John and Stella Bourque
#24292-08PT/24940-09PT, John H. and Karin A. Vetne
#24481-08PT/24934-09PT, Bowman Revocable Trust Agreement

v.

Town of Raymond

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 and 2009 following assessments of condominiums located in the “Clearwater Estates” development:

DOCKET NOS.:	NAME	MAP/LOT	2008/2009 ASSESSMENTS
#24109-08PT/24923-09PT	Wooley	38-5-61	\$213,200
#24110-08PT/24922-09PT	Champagne	38-5-33	\$225,600
#24111-08PT/24936-09PT	Gilmore	38-5-41	\$214,500
#24112-08PT/24929-09PT	Longey	38-5-44	\$217,800
#24113-08PT/24930-09PT	Grace	38-5-45	\$205,900
#24114-08PT/24931-09PT	Ouellette	38-5-46	\$199,500
#24115-08PT/24938-09PT	Freeman	38-5-49	\$202,500
#24116-08PT/24937-09PT	Hart	38-5-48	\$200,000
#24118-08PT/24942-09PT	Moccia	38-5-51	\$215,700
#24119-08PT/24943-09PT	Dow/Laroche	38-5-52	\$215,700
#24120-08PT/24945-09PT	Johnston	38-5-53	\$208,300
#24121-08PT/24947-09PT	Tripaldi	38-5-54	\$202,000
#24123-08PT/24924-09PT	Keane	38-5-55	\$205,900
#24124-08PT/24926-09PT	Vips	38-5-57	\$211,900
#24125-08PT/24927-09PT	Eldridge	38-5-58	\$203,800/\$207,600
#24126-08PT/24925-09PT	Thompson	38-5-62	\$207,600/\$209,300
#24127-08PT/24928-09PT	Bourque	38-5-63	\$207,600
#24292-08PT/24940-09PT	Vetne	38-5-39	\$221,000
#24481-08PT/24934-09PT	Bowman Rev. Tr.	38-5-47	\$199,500

(the “Properties”). These appeals were consolidated for hearing. For the reasons stated below, the appeals for abatement are granted for tax year 2008 and denied for tax year 2009.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties’ assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden for tax year 2008 but failed to prove disproportionality for tax year 2009.

The Taxpayers argued the assessments were excessive because:

- (1) the Clearwater Estates development was flooded in May 2006 and again in April 2007 which adversely affected the Properties' values in relation to other properties in the Town;
- (2) the scope of the damages from the floods are depicted in street, back yard and aerial photographs taken in April and May 2007;
- (3) the Properties cannot purchase flood insurance because they are not technically located in a flood zone;
- (4) Clearwater Estates is an over 55 adult housing development which is approximately 50% completed (with empty lots, empty slab foundations and lack of landscaping) which impacts the attractiveness of the development and limits the pool of potential buyers;
- (5) a comparison of 2007 and 2008 sales of Clearwater Estates properties to a similar over 55 housing development, Sherwood Glen, is evidence that Clearwater Estates property values were drastically declining;
- (6) Clearwater Estates is located adjacent to a Town permitted earth excavation site which had not been actively excavated during the development but a quarry operation was being planned in 2007; further, one mile to the west of Clearwater Estates is another quarry operation both of which affect the quiet enjoyment of the Properties and further reduces the pool of potential purchasers of a Clearwater Estates' unit;
- (7) the Town's assessor, Mr. Normand Pelletier, recommended revisions to the assessments at the June 29, 2009 board of selectmen hearing; the transcript of the meeting and the recommended abatements, though not signed by a quorum of the selectmen, are supportive that abatements are warranted; and
- (8) as indicated with each appeal filed, the approximate value for the individual units for 2008 was \$140,000 and \$180,000 for 2009.

The Town argued the assessments were proper because:

- (1) the board of selectmen chose not to abate the Properties' assessments because the flooding affected the real estate market throughout the Town;
- (2) the Town's last revaluation was in 2006; low sale prices indicated low activity for a period of 1½ to 2 years but an increase was shown in 2009 as depicted on the spreadsheet in Municipality Exhibit A;
- (3) the Taxpayers' 2009 values of \$170,000 and \$180,000, when equalized by the 118.7% ratio, indicate they are proportionately assessed for 2009; and
- (4) the Taxpayers' comparable sales analyses lack credence as no adjustments were made to the sales and the economy had an effect on values as there were many bank sales, distress sales and foreclosures.

The parties stipulated the levels of assessment in the Town were 107% and 118.7%, the median ratios computed by the department of revenue administration for 2008 and 2009 respectively.

At the conclusion of the hearing, the Taxpayers requested the board take official notice of the evidence in the Joni Plante v. Raymond, Docket #23990-08PT hearing, as this property was also located in Clearwater Estates. The board has done so pursuant to RSA 541-A:33, V(b) in making its findings.

Board's Rulings

Tax Year 2008

Based on the evidence, the board finds the proper assessments for tax year 2008 to be as follows:

DOCKET NOS.:	NAME	MAP/LOT	2008 ABATED
#24109-08PT	Wooley	38-5-61	\$180,400
#24110-08PT	Champagne	38-5-33	\$192,900
#24111-08PT	Gilmore	38-5-41	\$181,500
#24112-08PT	Longey	38-5-44	\$184,300
#24113-08PT	Grace	38-5-45	\$174,200
#24114-08PT	Ouellette	38-5-46	\$168,800
#24115-08PT	Freeman	38-5-49	\$171,400
#24116-08PT	Hart	38-5-48	\$169,300
#24118-08PT	Moccia	38-5-51	\$182,500
#24119-08PT	Dow/Laroche	38-5-52	\$182,500
#24120-08PT	Johnston	38-5-53	\$176,300
#24121-08PT	Tripaldi	38-5-54	\$170,900
#24123-08PT	Keane	38-5-55	\$174,200
#24124-08PT	Vips	38-5-57	\$179,300
#24125-08PT	Eldridge	38-5-58	\$175,700
#24126-08PT	Thompson	38-5-62	\$175,700
#24127-08PT	Bourque	38-5-63	\$175,600
#24292-08PT	Vetne	38-5-39	\$189,000
#24481-08PT	Bowman Rev. Tr.	38-5-47	\$168,800

The abated values are those recommended by the Town's assessor and, based on the limited market evidence available, appear to reasonably account for the negative factors affecting Clearwater Estates in the 2007/2008 time period.

While the Town testified the assessments were established at the time of the last reassessment in 2006 and were not changed in subsequent years, each tax year is a separate action and proportionality must be determined by reviewing the continual interplay between the market value of taxable property and the general level of assessment of a taxing jurisdiction. RSA 75:8 requires assessors to review assessments on an annual basis and adjust, if necessary, to achieve proportionality. This process, besides being embodied in the statutes (RSA ch. 74; RSA 75:1 and RSA 75:8), is also supported by the long history of case law that proportionality is

determined in each tax year by finding a property's market value and equalizing it to the common level of assessment within the taxing jurisdiction.

[W]e are convinced that the ideal of fair and proportionate taxation can be approached only through a constant process of correction and adjustment of assessments. RSA 75:8, indeed, requires selectmen and assessors to engage in just such continual revision by examining appraisals for error each year. This candid statutory recognition of the need for constant corrective effort is antithetical to any legal doctrine that would invest a given valuation of property with preclusive effect for the future, so that any error would affect subsequent assessments indefinitely. Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986).

In order to determine the appropriate assessed value for a property, the board must make specific findings regarding the property's market value and the equalization ratio by which to discount the market value to an assessed value. See Appeal of Loudon Road Realty Trust, 128 N.H. 624, 626-27, 517 A.2d 843, 845 (1986). Appeal of City of Nashua, 138 N.H. 261, 263 (1994).

The plaintiff may show that its property is being taxed disproportionately by establishing the fair market value of the property for the tax years in question, comparing it to the assessed value, and establishing by agreement or otherwise, the equalization ratio used in the assessment of property in the taxing district during the disputed years. See Milford Properties, Inc. v. Town of Milford, 119 N.H. 165, 400 A.2d 41 (1979). See generally Duval v. City of Manchester, 111 N.H. 375, 286 A.2d 612 (1971). Wise Shoe Co., Inc. v. Town of Exeter, 119 N.H. 700, 701 (1979).

While the market sales in the 2007/2008 were scant, the nature of the sales that did occur and a number of market influencing factors affecting the Clearwater Estates development causes the board to conclude the market value for the Properties declined to a lower level than the general level of assessment.

The board gives little weight to a number of sales that were presented in both these appeals and the Plante appeal where the developer was liquidating a number of units of an existing phase for financial and business reasons. The resale of several of these units in subsequent years indicates those transactions were below market value and thus given little

weight by the board. Similarly, the board gives little weight to any sales in which the property had been foreclosed on by a bank and subsequently resold. In both these instances, the sellers (developer and lending institution) are unduly motivated to sell the properties and for other reasons are willing to let them be sold for below market prices. Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994) (tribunal has authority to determine whether a sale is reflective of market value and the weight it is to be given).

The board was also unable to give weight to the market value estimate contained in the appeal documents filed by the Taxpayers' representative, Mr. Jonathan Rice of Commercial Property Tax Management, LLC and CPTM Consulting Group, LLC (collectively "CPTM"). He testified the sales comparisons were not intended to be appraisals and they were performed by several people within CPTM who were not present at the hearing. Further, one of the sales utilized, which affected the conclusion of the \$140,000 estimate, was a bank sale the board has already determined was below market. The remaining sales would indicate a higher market value than the \$140,000 estimate but no definitive conclusion other than the \$140,000 figure was supplied by the Taxpayers.

Also, in particular, the Taxpayers' requested the board take official notice of the Plante Taxpayer Exhibit No. 3, the transmittal page of an appraisal performed by paul brown & co., Valuation and Consulting Services ("Brown Appraisal"). The board is unable to place any weight on the Brown Appraisal's market value estimate of \$140,000 largely because only the transmittal letter, and not the analysis and supporting description and documents, was submitted. Consequently, the board was unable to review which approaches to value were employed, what comparables were utilized, what adjustments were made, etc. to determine the credibility of the value conclusion.

In determining the assessments initially proposed by Mr. Pelletier were reasonable, the board gave some weight to the two non-bank/non-developer sales that occurred in 2007 (7 Red Sox Lane and 48 Patriots Way) as shown on Municipality Exhibit A. No market sales occurred in 2008 which in and of itself is somewhat indicative of the softening market. Certainly, the several sales the developer was “dumping” in this time period would diminish the competitive ability for individual units to be sold at this time.

Also, during the 2007/2008 time period, a number of factors were present that negatively impacted the market value of the Properties. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975) (In determining proportionate assessments, all relevant factors affecting market value should be considered). The testimony and photographs submitted by the Taxpayers indicate both the unfinished nature of the development (lack of topsoil and landscaping, vacant foundations and sites, etc.) and the damage done not only to the developed units but also the remaining sites from the “Mother’s Day” and “Patriots Day” floods in 2006 and 2007. Related to that damage were outstanding repairs or construction that the developer needed to perform as directed in the November 2007 order from the department of environmental services (“DES”). Also, testimony was presented as to the potential for permitting of a gravel excavation and rock processing operation to the west of Clearwater Estates across the Lamprey River. All of these issues would have a cumulative chilling affect on the marketability of units during that time period by placing units at Clearwater Estates in a less competitive position than other over 55 condominiums such as “Sherwood Glen”. The board reviewed the assessment-record cards of a number of sales presented by the Taxpayers at Sherwood Glen and notes that those units were of slightly better quality and size, had basements and attics and were located in an area not subject to flooding.

All of those features appear to have insulated Sherwood Glen from an inordinate decline in value such as that which occurred at Clearwater Estates.

With the benefit of hindsight and the declining market (further increasing ratio) in 2009, it appears the Properties' inordinate decline in market value was limited to the 2007/2008 time period. Certainly, as the developer continued constructing units in the next phase, addressed a number of the DES order issues and installed a rip-rap berm to mitigate the possibility of future flooding, these factors would tend to stabilize the market value of the Properties and new units in subsequent years.

Tax Year 2009

The only evidence submitted by the Taxpayers for the 2009 tax year were market value estimates of \$170,000 to \$180,000 performed by individuals at CPTM. These estimates were tabulated by the Town and presented on the second page of Municipality Exhibit A. Applying the stipulated 2009 ratio of 118.7% to these value estimates indicate the Properties were reasonably and proportionately assessed and thus no basis exists for the board to grant an abatement for tax year 2009. Consequently, the Town's 2009 assessments remain as assessed.

If the taxes have been paid for tax year 2008, the amounts paid on the values in excess of the abated amounts shown above shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify copies of the above Decision have been mailed this date, postage prepaid, to: Jonathan Rice, Commercial Property Tax Management, LLC and CPTM Consulting Group, LLC, 10 Commerce Park North - Suite 13B Bedford, NH 03110-6959, Taxpayers' Representative; Chairman, Board of Selectmen, Town of Raymond, 4 Epping Street, Raymond, NH 03077; and a courtesy copy to Joni Plante, 27 Aunt Mary Brook Road, Candia, NH 03034.

Date: January 6, 2011

Anne M. Stelmach, Clerk