

TOWN OF CUMBERLAND
Board of Assessment Review Meeting

Tuesday, January 6, 2015
East Conference Room of the Town Offices
290 Tuttle Road, Cumberland Center
6:00 PM

A. Election of Chair: Election of Chair: Mr. Daigle nominated Mr. Thomas to continue as Board Chair. The Committee agreed by consensus and thanked Mr. Thomas for his willingness to continue as Chair.

B. Call to Order

The meeting was called to order at 6:00 p.m.

C. Roll Call

Present: Jim Thomas, Mark Stevens, Jerome Gamache, Jeff Daigle

Absent: Rob Crawford

Staff: Gary James, Assessor, Pam Bosarge, Clerk

Applicants: Paul & Katherine Cloutier of 100 Schooner Ridge Road.

Mr. Thomas explained that the Board is governed by State Statute. The hearing will be informal; this hearing is a De Novo hearing. Which states it is fair for either the appellant or Assessor to present new information. The Board will make their decision tonight after hearing the presentations. The appellant will receive written Findings of Fact and if either party doesn't agree the next step is to appeal to Superior Court within 30 days from date of the decision.

The appellants will present their case and then the assessor will have opportunity to present his position on assessment of the property.

Mr. James presented a copy of the tax map showing the location of the property.

The Board members introduced themselves as follows:

Jeff Daigle who resides at 228 Foreside Road

Jerome Gamache who resides at 32 Powell Road

Mark Stevens who resides at 1 Longmeadow Road

Jim Thomas who resides at 45 Longwoods Road

Gary James, Director of Regional Planning

Pam Bosarge, Administrative Assistant, Assessing

D. Hearings: Paul & Katherine Cloutier, 100 Schooner Ridge Road, Tax Assessor Map R02A, Lot 17 in the Low Density Residential (LDR) district.

Mr. Cloutier stated they purchased the property two years ago and have been town residents for about eight years. We believe the assessment on the property is too high and does create a financial burden on our family. We are here for what we think should be a principle of fairness and common sense. My understanding is that the property assessment should approximate market value and my understanding of market value is simply the price of something that will sell in a reasonable time. This request is mostly regarding the condition of the property, and secondly there are no good comps for the property. We are disappointed with the process. We believe the judgment of the Assessor was unreasonable in light of the circumstances and that the property is substantially overvalued. We also feel it has been an undue burden

on us as homeowners to go through this process twice, due to an apparent lack of faith in the previous assessor, resulting in unexpected reversal of the previous abatement with no notice to us other than the increased tax bill. We also believe the Assessor used incorrect assumptions in his recent assessment.

We purchased the property two years ago for \$594,550. The house had been vacant for three years as it went through the foreclosure process and was in need of serious repair. The Bank purchased the property at auction for \$695,000; and the town's assessment was \$940,000. There is an assumption that foreclosure is a secret process, but anyone can go to the auction. In this case the bank lost about \$300,000 on the property. Typically foreclosure houses are in bad repair, lower priced houses and need updating. The bank's appraiser appraised the property for \$700,000 it was listed in the MLS for \$695,000; it was listed in MLS for 82 days and had three price reductions. My understanding is the average house in Cumberland sold in 85 days. Our bank's appraisal at the time of purchase was \$600,000 which reflected the poor condition of the house.

We met with Nancy the interim assessor at the time she came to our property, completed an inspection and reduced the assessment to \$790,000. While we did not agree with that assessment, we accepted it at the time. When we received our tax bill in September 2014 the original assessment of \$940,000 was the assessment. We assumed this was a mistake as it was done without contacting us, without looking at our property, without (according to Mr. James) any notes from Nancy's visit to our house, and without any notice to us, he simply wiped out her abatement and sent us a tax bill that had increased by \$3,000. We were told to begin the abatement process again. After several weeks Mr. James came to our house and performed an inspection. He reduced the property value to \$803,200. We have two primary issues with the assessment:

- First, he states in his letter the house was purchased out of foreclosure and not an open market sale. That is untrue; the sales price of \$590,000 was absolutely all anyone was willing to pay for this property at the time of sale. 82 days on the market is ample time. The average days on market in Cumberland are 85 days.
- Second, the current market value of the house is greatly exaggerated by Mr. James' assessment. A thorough current market valuation was prepared for us, and her valuation, along with a host of comparable properties puts our property in the \$725,000 value range.

When we purchased the property it was uninhabitable, Mr. Cloutier presented the Board with photos showing rot in the building. The windows can't be replaced with replacement windows when there is rot, it is a big deal. The window cost is about \$1,100 and another \$600 or \$800 for the installation. This is a house built in 1988 which has had virtually no maintenance and no upgrades. This is very large house; it is not about size, location, or the pool in the backyard it is about condition of the house. There are no good comps for this property; there is a table of comparison homes of neighborhoods where buyers would be looking if they looked at our house. There is a comp for a house that is five years old and sold for 1,365,000. Using these houses requires too many adjustments, absent good comps you have to look at the data. Everyone had the chance to purchase this house, but the condition of the property kept it from being purchased. We feel the process is subjective and the value is not a realistic market value, as other houses on the street have sold at market value; if this assessment is correct everyone else is wrong.

Mr. Daigle stated the town records show the square footage as 5,826 sq. ft. is that correct.

Mr. Cloutier stated yes.

Mr. Daigle confirmed the purchase price for the property in April 2013 was \$590,000 at a time when it was appraised at \$600,000 by the bank. Do you mind telling us how much money you have invested in repairs?

Mr. Cloutier stated \$13,000 to 14,000 in windows another \$16,000 in painting and \$15,000 for the wood shed, probably a little over \$100,000 total.

Mr. Daigle asked Mr. Cloutier his personal opinion of market value.

Mr. Cloutier stated our realtor said \$725,000, and he thinks \$700,000 is a realistic figure. The figure to replace windows and doors is close to \$150,000.

Mr. Thomas asked his opinion of how you define market value.

Mr. Cloutier stated it is not my definition, you can google it.

Mr. Thomas asked if he knew the difference between the concept of just value, market value and Maine's Constitution.

Mr. Cloutier stated no, he is not a lawyer.

Mr. Thomas stated as part of this process the constitution defines assessments should be made according to just value. Just value has been further defined by the courts as market value. But in context of the body of all of the assessments; so it is not just what property is worth today, that is not the right standard. We need to balance the idea that the property was worth what on the assessment date and further how well you carry the burden of the entire tax as of the assessment date of April 1st. It is not a simple matter of taking an appraisal that was done for the purpose of re-financing, in fact the appraiser states that no other use of this appraisal is intended other than borrowing money. The bank wants to make sure they can get their money back they are going to lend to you. The second side of that is the opinion of value from the realtor is providing a series of ranges of value

Mr. Cloutier stated Dava's (his realtor) opinion was what our house would sell for today, I would call that a market value I don't know about a just value.

Mr. Thomas stated it could be she is not qualified to say that because she is not a licensed appraiser.

Mr. Cloutier stated she is qualified to have an opinion.

Mr. Daigle stated by law she is allowed to appraise for secondary market for up to 2 million dollars, and agreed she is not a Certified Fee Appraiser.

Mr. Cloutier stated if you look at the houses that sold on Schooner Ridge in 2012 and 2013 they all sold very close to town assessment. So, I look at that and think the assessment and market value are similar and I wonder what the problem is.

Mr. Thomas stated that the Bureau of Taxation, Maine Revenue Association asks assessors to not consider bankruptcy sales. They are excluded for assessing valuation statistics. By definition an out sale from a bankruptcy/ foreclosure or distressed sales are not to be considered as arm's length transaction. These sales are when a bank is involved due to financial distress of a former owner.

Mr. Cloutier stated this property was on the market for 82 days. If this house is to compare with a Mary Lane kitchen it would take an additional \$300,000. We painted our cabinets, and updated our appliances with Sears's appliances. The principles of fairness doesn't seem fair, all the houses on Schooner Ridge are smaller.

Mr. Gary James, Assessor agreed the property is just shy of 6,000 sq. ft. all of their information on the sale, foreclosure process is accurate. I am not disputing that the value might have been market value when they purchased it. I think if you look at \$590,000 + \$150,000+- + labor = \$790,000. We are currently looking at a value as of April 1, 2014, with the appreciable amount you had to put into the property to make it habitable. The realtor stated it would be approximately \$725,000 which is a moving target. I did three analyses for this property. I realized in the realtor's comps she used effective gross area and not living area. I did an appraisal for her comps and found my values came in above \$800,000. I also selected comps that had similarity in size, finding comps are almost impossible so Mary Lane and Maeve's Way were used for size and location. They are definitely better homes. Based on our cost models based on building grades I reduced your home on quality and condition value. I then looked at equity which is comparing your home in relation to other houses in the neighborhood. Again, all of those are smaller homes and smaller lots, with those numbers your home came in at \$825,000. As an assessor I have to look at equity, which is your neighborhood where people want to live. Those were the three different ways I analyzed your property. In reducing the value to \$803,000 I looked at depreciation; I graded your house from good to poor. There is a 26% depreciation on your building, before it was at 12% which is average for a house with regular upkeep. When you look at a square foot cost it is helpful to understand we value on cost approach and sales method. Which is what would it cost to build the building today? Your property is valued at \$137.63 per square foot, the lowest comparable on your street. You requesting \$120 per square foot, the lowest on your street is \$140 a square foot and that is non waterfront and with no water view. You purchased a distressed property and the rule is they sell for approximately 30% below true market value. There was a computer cliché with the computer and his predecessor and there were no notes on why the value was changed from \$940,000 to \$795,000, it was put back at the \$940,000 assessment and has since been reduced to \$803,000.

Mr. Thomas asked if the former assessor didn't change the value in vision and it was human error.

Mr. James stated yes and in summary an approximate value with the equity analysis values the property were between \$824,000 to \$830,000; the sales analysis utilizing my comps it is between \$952,000 and \$1,000,000 and I understand it could go lower; it is a subjective number. I am using the steps in our system; I have to go with what the system allows to adjust. My comparable properties were from \$786,000, \$848,000 up to a million. In looking your realtor's comps with adjustments the values are from \$850,000 to \$865,000. Based on the data and the market \$803,000 is a fair value, it could be higher.

Mr. Cloutier stated he understands what you are saying but there is a tremendous amount of subjectivity in this process.

Mr. James agreed the numbers are based on inspections by the assessor, building quality, condition and the depreciation factor. The average depreciation for a house that is maintained is 1% to 2% per year. The percentage is the same as the number of years. If you have a ten year old house with average depreciation you will see a 10% depreciation factor; because a furnace and roof etc. will still be ten years old even with maintenance of the property. Every appraisal is subjective that is why at the bottom of every appraisal it states it is my opinion that. In this case it three assessor's opinions over the last five years, since 2008. He also stated the property was improved without building permits.

Mr. Cloutier stated this house has had no improvements since it was built in 1988.

Mr. James stated when Bill Longley went into the property there were improvements without permits.

Mrs. Cloutier stated that is not at all how it happened; the bank discovered the third floor which had been unfinished space but it is now finished. So it is more than storage area. Before we were able to purchase the property I went to town hall we figured this is what we think the square footage of the third floor is

and obtained an after the fact building permit. That work was done prior to our ownership of the property. That was the only improvement to the house over the years.

Mr. Cloutier stated this house was built in 1988 and everything in it is from 1988.

Mr. James stated he understands that but the finished third floor increased for square footage from 4800 to 5600 square foot. I am not arguing the property wasn't distressed at purchase. We have a good understanding of the quality and condition of the property and it is a question of where the value lies.

Mr. Cloutier stated he doesn't think the Assessor appreciates the condition of the property; to replace the cedar roof would be approximately \$50,000 to \$75,000 dollars. We have painted the master bath and put in a new vanity top and sink.

Mr. Thomas asked if he knew why the house was so large.

Mr. Cloutier stated it was built by the President of Unum.

Mr. Thomas asked if the house were brand new it would be worth \$900,000.

Mr. Cloutier stated yes, it was built as a period reproduction; it is a \$200 to \$300 dollar a square foot house to build.

Mr. Thomas asked if \$200,000 would restore the house.

Mr. Cloutier stated no, never the roof cost is north of \$65,000 windows \$65,000, painting \$20,000 the boiler is 1988, it would be realistically with doors and windows probably \$300,000. Every bathroom is a gut; there are two tubs that don't work. Dava was comparing budget range for comparable houses.

Mr. Thomas stated this is not how the process works.

Mrs. Cloutier stated Dava has sold two properties for them and within \$10,000 of the projected price both properties have sold.

Mr. Cloutier stated we lived at 54 Schooner Ridge and it sold for close to the assessment, it was updated and in brand new condition and it sold for the town's assessment.

Mr. Daigle asked what portion of the \$803,000 was land value.

Mr. James stated the land \$305,500 and that is down from \$372,000.

Mr. Cloutier compared similar lot sizes and prices you realize this lot has a larger lot because the additional land was not useable.

Mr. James stated the base two acre lot is valued at \$268,300 with the access 2.28 acres valued at \$37,300; when you compare this with other lots for \$250,000 to \$270,000. Mr. James stated market values are different depending on Cumberland Foreside, Chet's Way, or Cumberland Center.

Mr. Stevens asked if there was water access.

Ms. Cloutier stated yes, off from Ledge Road.

Mr. Stevens stated this is similar to a property abutting his house on Longmeadow. There is a large house abutting that was purchased from a woman who owned it for a very long time and they are on a similar tract for eight or nine years. They now have a for sale sign, I don't think the house is done they are just done. I have a deeded right of way, and because my house comes out on Longmeadow there is a different multiplier rather than if I was on Foreside Road. There is a different land multiplier depending on whether you are on the east or west side of Foreside Road. Vision appraisal uses a scientific model process to result in a fair and equitable distribution of tax burden.

Ms. Cloutier asked if they sold their property tomorrow for \$725,000 would it then be assessed for \$725,000.

Mr. James stated we are not allowed to spot value, in otherwise we can't value upon sale, but upon condition.

Mr. Thomas stated your realtor stated your house is worth this because she looked at several houses. Assessing is the same process, if this were an out sale at \$725,000 maybe it would be part of the range.

Mr. Daigle stated the state law allows between a 90 and 110% swing factor; which means the Assessor could undervalue or overvalue your home by 9.9%. Is he 109% on this one, I don't know the models are what they are.

Mr. James stated if you look at 10% of \$803,000 it is \$723,000.

Mr. Cloutier asked what the ratio of sale to assessment value was in Cumberland.

Mr. James stated when you purchased the house it was at 107%, the assessments were 7% higher than the sale price. Officially we don't have the new numbers; but it has gone from 103% to 99 to 100%. I am doing a study for the Town Manager to present to the Town Council the ratios for the Foreside, Center, and West Cumberland. We want to see if there is a subset to compare assessment to market value for the areas of town.

Mr. Gamache stated what has led us here this has been a two year event. Where is the property right now, has the assessment been dropped down to \$803,000.

Mr. James stated yes, it started at \$940,000, I granted an abatement of \$136,800 in the fall and if nothing changes tonight the assessment value is \$803,200, until such time there is a re-valuation; a further abatement, or building permit for renovations.

Mr. Thomas states the law presumes the assessment is correct and it is the burden of the applicant the tax payer to prove it is wrong. If the assessor follows his or her own system and applies the systems fairly and equitably in all cases on your case; then his assessment is supposed to prevail. One of my problems is I am still not clear, if the property assessed new is approximately \$930,000 – the assessment card says the replacement cost is \$633,176 plus the land value of \$305,500.

Mr. Cloutier said probably more.

Mr. Daigle asked if this were a typical 1988 house that had been properly maintained, maybe a new boiler, no rot, what the depreciation would be on a house like that.

Mr. James stated the actual date was 1988 and the effective date is 1984, it has depreciated more than 1% per year.

Mr. Cloutier asked if there was a worse designation than poor.

Mr. James stated no that would be a market value adjustment for a house that would probably be a tear down.

Mr. Daigle moved to go to public discussion amongst the four members with respect to determine the facts and findings as presented by the applicants and the assessor with the right to entertain questions.

Mr. Stevens seconded.

VOTE: Unanimous 4 – 0

Mr. Daigle stated this is a tough hearing; the Cloutier's are credible, the majority of the evidence they provided is good. The Assessor has done an excellent job with his three models. He is currently at \$132.00 a square foot. I understand that the Cloutier's have a house that has \$200,000+- deferred maintenance and both positions are very good. I am not sure yet how I feel, but I do want to say both positions are very good and my gut is that the Assessor is within his legal limit and probably at 109%.

Mr. Thomas asked meaning he can defend his current assessment.

Mr. Daigle stated he has bent over backwards to accommodate the models and the fact that is at \$132.00 per square foot and the fact that everything around it is selling for \$200.00 or \$225.00 shows me he has already made his adjustments.

Mr. Thomas how do you reconcile that with the opinions we are hearing about the property's value.

Mr. Daigle stated in what we just said the \$132.00 per square foot includes the land. If you back the land it comes in much lower per square foot. If there wasn't as much to repair on the property the square footage cost would be \$185.00 to \$200.00 per square foot.

Mr. Gamache stated there have been people who come to boards like this and don't get their abatement; they have gone to Superior Court and had lawyers argue their case. That Judge made a decision and then it was appealed to the Maine Law Court. This then becomes a case law decision. In case law there is a 10% reference to allowable difference in valuation. That is in case law where the law court has said when the assessor says something, because of certain subjectivity, that plays into it. This is a timeline you are looking at a snapshot stating at this particular year this value is X, and now a year or two later when it is being argued things have changed. The market has changed. There is this 10% fudge factor to make sure things are being done fairly and equitably according to statute and you are not being discriminated against because of some factor such as you are from out of town. It is not that there is a personal grudge, there is a dispute of value which is the 10% we keep talking about which is in case law. I don't think you could put your house on the market for \$800, 00 and get that. I am sold on that, I buy it might sell for \$725,000 or in that range which makes sense to me. However, where the assessor is at this value is where the first assessor was at between \$790,000, \$803,000 and those numbers are within 10% of where your property might sell. The difficult part of this is that it appears you are both right.

Mr. Daigle stated we can't expect the assessor to hijack the model and make adjustments that are not fair to other residents.

Mr. Stevens stated again, this house reminds me of the other house in town, and as the owners repaired the house the assessor adjusted the value. The unfair part is if you put the house on the market today at \$725,000 I think it would sell pretty quickly. The market seems to have picked up, and this value appears to be within the 10%. This is probably the most lucid argument we have had in ten years of my service

on this Board. The assessor has done his job figuring the square footage number; to rebuild this house would be double the \$137.00 per square foot.

Mr. Daigle stated if the land cost is removed from the \$137.00 the true value of that home at \$115 a square foot. The land has some restrictions, the topography, the condos and the turnpike noise.

Mr. James stated if you take the land out the building is about \$500,000.

Mr. Thomas agreed with everything everybody else has said; I think the assessment is defensible. I also agree it seems like you are both right. One thing you said at first is it is all about the condition and then I went on to think about what the system produced for a value for a new house and what is the depreciation that has been declared. And I wonder if maybe it is possible that the assessor might have missed some depreciation when he observed the property. We have said that a typical 1988 house reasonably maintained would have 5-7% depreciation and this is really just another 15 – 20%. I wonder if that is the correct number. Is this property so extraordinarily depreciated that 24% is not appropriate.

Mr. James stated 24% of \$633,000 is approximately \$140,000, in theory the cost to cure. Some things are not curable and some are where you have to walk through bedrooms, or everyone hears the traffic such as external factors. I would anticipate that most everything in this house is curable.

Mr. Daigle asked if Mr. James felt the 24% would cover the deferred maintenance.

Mr. James stated yes to the extent now, if there is more than that it would bring the value higher than the \$633,000, because the undepreciated essentially was \$85.00 per square foot. The simple question is could you build this house for \$85.00 per square foot today.

Mr. Thomas asked if the property changed from poor to good condition would the value be changed.

Mr. James stated if they fix everything but don't upgrade it that is the depreciated number. If they upgrade the kitchen the quality and condition also changes. I have to be careful in spot assessing to look at change in condition or change in characteristics whether something in the neighborhood changes or on the lot.

Mr. James asked if the current depreciation is 24% due to condition if they fixed the roof with the same quality of material are they not lowering the depreciation factor.

Mr. James that is correct absolutely, the depreciation factor is the value of condition.

Mr. Daigle asked how it works on spot adjustments with respect to land portions of adjustments. Is there is a way to adjust the land value. The town has done a very good job on the building side. Is there a possibility of downsizing the value of the land, or is not fair to the aggregate; what is your opinion.

Mr. James stated the first two acres is what we value everything in the neighborhood; which indicates a location adjustment; the street address and the location is a 2.2 multiplier. The lot is \$3.08 per square foot which is the same on every lot on the street. The additional 2.82 acres has been dropped down to \$6,000 an acre there is a ten times difference for the additional land. In answer to your question I would be going out of equity to adjust the first two acres. The additional 2.82 acres has been adjusted down by 90%. I did make a change in the land value from \$373,000 to \$303,000.

Mr. Thomas asked if the assessment of the land would be different if it were vacant.

Mr. James stated yes.

Mr. Thomas asked if there was a factor for improvements.

Mr. James stated that Vision calculates the value. When I was an assessor the change between vacant land and subdivision land with road increased 30%. He used as an example the two lots for sale on Lafayette Street in Yarmouth for sale for \$250,000. But the amount of money it will cost to develop will be substantially different.

Mr. Gamache stated I don't think the statute and system is designed for the Board of Assessment Review to second guess the assessor and tweak their work to come up with our own value. It is not set up that way or every tax payer in town would come in and negotiate their amount every year. That is why the 10% factor is there. The Board's job is to make sure what is being done is not discriminatory or unfair within that 10% range. If things are out of that 10% than almost by definition something is not being done equitably and we need to solve the issue. I stated before that both sides are approaching this correctly, and I feel there is rightness on both sides. And there is a difference of value; if I view my job as picking the correct number for this property I would probably split it down the middle. He questioned whether the needed accurately reflect depreciation. But I wouldn't go down to the \$700, 00 that is requested, I don't think that is supported; and I think the \$725,000 as suggested might be light. I don't believe that is the Board's role in this process; its role is to be a double check against discriminatory and unfair assessments. I believe we are within a range that is where I think we are in the process.

Mr. Cloutier asked if with the 10% we could possibly be undervalued by 10%, and could theoretically be worth \$900,000.

Mr. Thomas stated the Assessor can defend his assessment if he is within 10% of market value range.

Mr. James stated his range of value suggests \$723,000 to \$823,000 that is what the state courts have said is a range for my value.

Mr. Gamache stated because it is an adversarial system and the assessor sets a level and someone else comes in and fights with it. You never have case law about a 10% over valuation, who fights that.

Mr. Thomas stated it looks like we about to conclude that the assessor is within the system, and asked the Cloutier's if they had anything to add.

Ms. Cloutier stated they are obvious unhappy with the result.

Mr. Thomas encouraged the Cloutier's to continue dialogue with the assessor in case perhaps there was some depreciation that the assessor did not see for future assessment.

Mr. Cloutier thanked the Board for their time, he did say in fairness and comparing the sales on his street it seems unlikely that he has an \$803,000 value house.

Mr. Gamache stated if we set a value at \$740,000, the Town can appeal just as you can appeal our decision, and if the assessment is within 10% which is within case law. I don't see how the Town would not win. It is uncomfortable with us on the Board we can agree with what you say but must abide by the charge of the Board.

Mr. Gamache moved that the Board not grant the abatement request as stated by the Cloutier's and that the Board would have subsequent findings of fact circulated for approval. Findings of fact will be based on the discussion, record and presentation tonight from both parties.

Mr. Stevens seconded.

VOTE: Unanimous 4-0

Respectfully submitted,

Pam Bosarge
Administrative Assistant