

**TOWN OF CUMBERLAND**  
**Board of Assessment Review Meeting**

**Thursday, September 24, 2015**  
**East Conference Room of the Town Offices**  
**290 Tuttle Road, Cumberland Center**  
**6:00 PM**

**A. Call to Order**

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

**B. Roll Call**

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

Staff: Gary James, Assessor, Pam Bosarge, Clerk

Applicants: Donald Bittermann & Martha Greenleaf and  
Representative: Jonathan A. Block, Esq. of Pierce Atwood LLP  
Bob Pietroski; Certified Residential Appraiser

Mr. Thomas reviewed procedure as stated in his e-mail to Mr. Block.

The Board of Assessment Review has not adopted formal procedures for conducting its hearings at this time. Our hearings are informal in nature with the focus that each party has ample time to present their evidence and testimony. The Board generally first asks the applicant to present his or her evidence and reasons for appealing the Assessor's decision on the abatement application. Board members may have questions during the presentation. The Assessor is also given the opportunity to ask questions of the applicant.

The Assessor is then given the opportunity to make a presentation on the assessment and valuation and methodology followed used to arrive at the assessment and the rational for his decision to deny the abatement request. The applicant and Board members are given the opportunity to ask questions of the Assessor. There may be some additional testimony and then there typically is some additional discussion between all parties with follow up questions from the Board members with the Assessor or the applicant.

After the Assessor and applicant have finished their presentations, the hearing will be closed, no new testimony or evidence will be taken and the Board will begin its deliberations of the facts presented. Deliberations are conducted in public. It may be also that during the hearing the Board may find it helpful to conduct a view of the property, neighborhood, comparable properties, etc. If such view is to be taken, the Board will set a date and the proceeding will be a formal part of the Board review process with the Assessor and taxpayer(s) in attendance.

Based on the evidence and testimony presented, and reviewing the same under the legal standards for tax abatements, the Board will then vote on the appeal. One or more members of the Board is assigned to write a summary of the Board's findings and written decision which is then circulated to the Board members sitting on the appeal for edits corrections, and then signed and issued by the Chair to the applicant(s) and the Assessor.

As of April 1, 2014 the property was assessed at \$1,275,000, an abatement of \$224,000 was granted on Oct. 27, 2014 and a second abatement of \$51,000 was granted on Dec, 26, 2014, for an adjusted 4/1/2014 assessed valuation of \$999,900.

Mr. Block thanked the Board for their time this evening, stating he was present with Dr. Bittermann and his wife Martha Greenleaf who are seeking for fairness and equity to pay their share of the tax burden. They feel they are being substantially over assessed. Dr. Bittermann and his wife built a modest 2,300 sq. ft. modular home on less than six acres on Chet's Way. The house is a functional, modest modern home with a modest interior. In 2014 the house was assessed for 1.2 million the applicants talked with Mr. James and received two abatements. The current assessment is \$1,051,000 and we feel that is still substantially over assessed. The Bittermanns have had two independent appraisals on by Robert Pietroski with an appraised value of \$770,000 and Robert Strong with an appraised value of \$875,000. In comparing values of three other homes in the area they are valued at \$152.00 and \$177.00 per square foot. The Bittermanns square foot value is \$317.00 per square foot. Mr. Block introduced Robert Pietroski and asked him to review his appraisal.

Mr. Pietroski reviewed his appraisal (Exhibit 1) stating this house is unique due to the style and the homes used for comparable sales were colonials; one at 42 Chet's Way and 15 Pumpkin Hollow in Cumberland the others were Lady Slipper Lane in Falmouth and Pogy Shore Way in Yarmouth. Mr. Pietroski stated his appraisal included cost method for an appraised value of \$829,636 and sales approach which indicated a value of \$770,000. Mr. Pietroski stated he felt this home has functional obsolescence due to the third bedroom which is used as an office and only has a ½ bath. To use this room as a bedroom the only access to a full bathroom is either in the master bedroom or the other side of the house in the guest room. He estimated the cost of this deficiency at \$15,000.00 which is the typical cost of a bathroom update. This bathroom area is very tight, and he was not sure where a tub could be placed.

The Board members discussed the comparable homes used for the appraisal.

Mr. Thomas stated an assessor was required to stay within the town for comps and conceded the point that it is not the law, but the standard practice for assessors.

Mr. Block stated that is not a law.

Mr. Block stated the theory behind a cost approach appraisal is that a buyer will not pay more if they could build it for less.

Mr. Thomas stated the comp at Pogy Shores has heavy traffic and water access and is in a different town he struggled with that as a comparable.

Mr. Pietroski agreed that is the weakest of the four comps, he was putting himself in the position of a buyer, and given certain requirements buyers might go to a similar town.

The Board thanked Mr. Pietroski for his presentation.

Mr. Gary James, Assessor stated there has been a progression of meetings and based on the e-mail dated December 23, 2014 where the applicants accepted the additional abatement of \$51,000 they withdrew their request to before the BAR. Mr. James stated he was disappointed to continue with this hearing.

Mr. Thomas asked about the original abatement request.

Dr. Bittermann stated they appreciated both abatement amounts but based on research still feel they are not fairly or equitably assessed; there was no dollar amount requested for the abatement.

Mr. James stated the building permit was for \$957,300 as an appraiser it is important to look at actual cost. This was a custom built modular delivered from California. The closest modern building in town would be the Friend's School on Route One. This home has extensive custom contemporary design it is not similar to a farm house. The property across the street is not a modern contemporary design is a buyer going to look at farmhouses, or colonials if they want a modern contemporary house. The house at 42 Chet's Way was negotiated down in price due to extensive structural damages, which cost \$100,000 in repairs. The applicant's home has bamboo floors, steel posts in the basement a cedar porch, security system, black granite and ceramic black splash a 200 amp service, and 4-zone heat. This is a high end home. The cost approach is important in mass appraisal. This is a unique home and the cost approach is the best approach for value. Mr. James reviewed the comps used in Mr. Pietroski's appraisal noting the differences in the property types and location.

Mr. James reviewed Dr. Bittermann's insurance policy stating the value of his property. Mr. James stated the appellant spent 1.2 million for the property and it is insured for well over a million. I don't feel the appellant has adequately shown the house should be valued less, and based on the cost approach and previous abatements; this is a fair assessment.

Mr. Crawford asked if people can overspend and not recapture the cost in the market.

Mr. James agreed yes and that is why he dropped the value on this unique property.

Mr. Crawford stated he was not sure this is an accurate snapshot of value. Mr. Pietroski's appraisal is as of April 1, 2015 and Mr. Strong's is as of November 2014.

Mr. James stated there was a 4% increase in value as of April 1, 2014 our ratio was 107%; currently total the ratio is 98% - 97%.

Mr. Block asked Mr. James a series of questions regarding the assessment record (Exhibit 5).

Mr. James explained the computer models and reviewed the assessing record.

Mr. Block asked if the assessor uses the sales approach; and if buyers looking for a contemporary house might also look at farmhouses.

Mr. James stated in general a person looking for a contemporary home would not be happy with a farmhouse.

Mr. Block asked Mr. James if he valued the house on the cost listed on the building permit.

Mr. James stated no, the cama models in the assessing software program assigns values for a property; he has access to the building permit data.

Mr. Block asked if Mr. James thought a buyer cared about cost of construction at a re-sale.

Mr. James stated there are three approaches to value and all three lead to market value.

Mr. Block asked how cost approach leads to fair market value.

Mr. Thomas stated the burden is on the applicant the assessing system is presumed valid.

Mr. Block asked if the Bittermann's were insuring based on replacement cost or market value.

Mr. James stated he didn't know he is not an insurance agent.

Mr. Block asked if something sells after 4/1/14 referencing value set as of April 1 of the assessing year; would the assessor look at an April 2<sup>nd</sup> sale.

Mr. James stated if the information were available.

Mr. Block asked Mr. James about the last sheet of his packet with the adjusted numbers rounded high so all the comparable came in around \$990,000 to defend value.

Mr. James stated in #2 the \$75,000 adjustment was based on land values and general adjustments.

Mr. Block asked Mr. James if he did a grid.

Mr. James stated no, there were no appraisals these were estimates based on assessing information.

Mr. Block asked if it is possible to over pay for a home.

Mr. James stated they might have over paid with delivery costs.

Mr. Block referenced Exhibit # 6; and asked Mr. James the purpose of the e-mail and his statement about being disappointed.

Mr. James stated the Bittermann's had received two abatements and had agreed not to go to the Board, I feel they didn't act in good faith and that was disappointing.

Mr. Block asked Dr. Bittermann is he was satisfied with the response.

Dr. Bittermann stated there is no question they overpaid based on the appraisals. Dr. Bittermann stated they wrote a letter stating they appreciated the abatements and thanked the assessor for his response; however in looking at more data we still don't feel we are assessed fair and equitable a buyer would be shocked at the tax burden on the property.

Mr. Block stated he felt they had met the burden of proof with two professional appraisals of \$770,000 and \$875,000 well below assessed value. In a residential market the average buyer only cares that the property is comparable with similar property.

Mr. Pietroski stated a unique house that a typical buyer might not want will extend market time; this could be on the market for a while. It is a beautiful modern contemporary home, but not typical for the Town of Cumberland.

Mr. Daigle moved to close the public hearing for the Board to begin deliberations and to allow questions if more information is required.

Mr. Stevens seconded

VOTE: UNANIMOUS 5-0

The Board took a ten minute break.

Mr. Thomas asked about jurisdiction time when a tax payer files an abatement the assessor has 60-days to make a decision, and there is another 60 days after the assessor's decision to receive an application to the Board, with the right to extend deadline in writing.

Mr. Block stated there is an e-mail.

Mr. James stated the e-mail was dated December 2014; the clock expired before the applicant applied.

Mr. Block stated following the course of discussion it is obvious the tax payer does have jurisdiction.

Mr. Gamache asked if there had been any emails between December and July.

Dr. Bittermann stated he was not sure.

Mr. Block stated the on-going purpose of the rule is to protect the taxpayer in course of conduct.

Mr. Thomas stated legislation states jurisdiction ends one year and does not overlap to the next year.

Mr. Block stated no time limit equals an extension.

Mr. Crawford in summary stated the last correspondence the tax payer had with Mr. James was in December 2014, with an apparent acceptance of the abatement, and a request to withdraw the application to meet with the Board.

The Board discussed the application with the following comments:

Mr. Crawford stated he was struggling with the adequacy of the appraisal evidence with the appraisal based on the appraisal dates of 11/2014 and 4/1/015. The difference in value between the two appraisals is 13%.

Mr. Gamache stated there have been a lot of references to overspending; however something is worth what is worth to the purchaser. This is new construction of a unique property, it is a one level home he is comfortable with the cost approach until this home sells to show how sales approach compares to cost approach.

Mr. Daigle voiced concern of \$314.00 per square foot, and understands it is a unique property however it is 2,300 square foot with a value of almost a million dollars with no ocean view or access and it is not in a Foreside location. I wouldn't list the property for this sales price; that said Mr. James analysis is not wrong he is correct *in terms of a Cost Approach to valuation* (meaning the way he did the math was understandable and not unorthodox)". But Mr. Daigle disagreed overall that the Cost Approach was/is the correct methodology to utilize to determine Market Value. "*In terms of limited market comparable property, there are contemporary neighborhoods in Cumberland and our surrounding communities (to which adjustments could be made, unique as the Subject Property is).* The house is only 2,300-2,400 s.f., it is small, there is nothing outstanding about the location, and I do not believe it would sell for anywhere near the Assessment. I said a more accurate square foot value multiplier as shown by the two certified fee appraisals would be \$280. \$311 is too high.

Mr. Crawford stated the Board is tasked with reviewing the assessment to determine if there is enough evidence to find a manifest error in assessment. The benchmark is to have the assessment reflective of fair market value. The cost approach was used as there was no sale data. Mr. Pietroski differs in opinion based on adjustments to other houses.

Mr. Gamache stated the assessment is roughly on the bubble of the 10% factor he is on the high end of the range.

Mr. Thomas stated he was troubled by the dates of the evidence which don't match up to the assessment date. He is not sure the applicant has proven the assessment was manifestly wrong.

Mr. Gamache stated until the property sells he feels the cost approach is appropriate.

Mr. Crawford stated the appraisals have significant adjustments because this is a unique property, the appraisals show two qualified and informed difference of views.

Mr. Stevens stated there are other contemporary homes in Cumberland; which may take longer to sell depending on the type of buyer.

Mr. Gamache stated the cost approach might be a little higher than 10% but not 15%.

Mr. Pietroski stated the definition of a sale is a willing buyer and seller the uniqueness of the property may extend market time and drop the value.

Mr. Thomas asked for a poll from the Board members.

Mr. Daigle stated respecting all professionals in the room, his vocation requires market value first and last he feels the value is closer to between the two values, the much lower Certified Fee Appraisals submitted by the applicant. "Appraisal is not an exact science, it is an opinion and that notation (*that it is an opinion*) is included in all CFA reports... highly respected professionals such as Mr. Pietroski and Mr. James can and do disagree, and that is okay. My vocation requires me to work in the Market Approach because the market is what determines value, not cost. It does not matter if there are gold finishes in a house; the market is what determines value (not high finish costs).

Mr. Crawford stated there is a range between \$934,500 and \$875,000 at that range there is a 7% difference in valuation. With a range of \$934,500 and \$770,000 there is an 18% difference.

Mr. Stevens asked if the appellants had been discriminated by methodology, no the cost method is valid. Did the Assessor do his job, I would say yes.

Ms. Greenleaf, applicant stated yes, it appears we overpaid for the house, and they are overvalued by square footage, she asked if they should be penalized twice, she still feels the value is not equitable.

Mr. James stated one of the houses on the street has an indoor basketball court, and one could argue an absurd cost the other way.

Mr. Thomas stated he didn't think the Bittermann's asked for a specific amount they just wanted an adjustment. Mr. Thomas stated with respect to his colleague Mr. Daigle he doesn't think there has been proof that the assessment is manifestly wrong. He has some confidence it might not sell for this; the Assessor has made a \$275,000 concession. He still has issues with the appraisals and he feels the cost approach can work for new construction he doesn't feel there is evidence with the lack of a buyer to meet the burden of proof to prove the assessment is manifestly in error.

Mr. Crawford stated there are two prongs for evidence that impeaches the validity of the assessment.

Mr. Gamache stated he didn't think the value was outside the 10%.

Mr. Crawford stated to prove a manifest error in assessment you need to take evidence of market value as of that date, the 10% is allowed for mass appraisal; the appraisals do not match the April 1, 2014 time frame.

Mr. Crawford moved that the taxpayer has presented evidence deemed credible that impeaches the validity of the assessment.

Mr. Daigle seconded.

VOTE: 2 in favor (Daigle, Stevens)  
3 opposed (Crawford, Gamache, Thomas)

The appeal was denied based on testimony regarding dates of appraisal, levels of difference and the 10% threshold.

Mr. Thomas explained the process stating the Board will draft Findings of Fact internally and approve as a Board, and authorize Mr. Thomas to sign the notices. The written decision will be completed within ten days and upon receipt of the decision triggers the 60 day appeal process.

Mr. Crawford moved that the Board authorizes Mr. Thomas to sign the notice once the Board members reach a consensus.

Mr. Stevens seconded.

VOTE: Unanimous

The meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Pam Bosarge  
Administrative Assistant  
Board of Assessment Review