

New London Reassessment

Docket No.: 18488-01RA

ORDER

On December 24, 2003, the board denied the “Movants’ Motion for Rehearing (‘the Rehearing Motion’) with respect to the Order dated November 17, 2003 (the ‘Order’). The board has since received the ‘Objection’ filed on behalf of the Town of New London (‘Town’) dated December 22, 2003. As the board indicated in its December 24, 2003 ruling, the reasons for the denial of the Rehearing Motion will be stated below.

While the Rehearing Motion is somewhat lengthy and repeatedly asserts the Order is “unlawful and unreasonable,” it fails to meet the standards prescribed in RSA 541:3 and TAX 201.37 (f). The statute requires a determination that there is “good reason” for granting a rehearing; the board’s rules further provide that “rehearing motions shall not be granted to consider evidence previously available to the moving [p]arty but not presented at the original hearing or to consider new arguments that could have been raised at the hearing.”

One issue raised in the Rehearing Motion is a disagreement regarding what weight should be given to the August 13, 2003 report (‘Report’) and testimony of the Movants’ expert, Mr. Fritz Giddings. It is fair to say the Movants placed heavy, if not exclusive, reliance on the Report and Mr. Giddings’ testimony in challenging the Town’s 2002 update of waterfront properties. The board, however, gave the Report and the testimony only the weight it deserved.

See, e.g., Society Hill at Merrimack Condominium Assn. v. Town of Merrimack, 139 N.H. 253, 256 (1994) (rejecting claim of error based on alleged “discounting” by the court of the testimony of appellant’s expert witness), and cases cited therein;¹ see also the Town’s Objection, ¶8.²

The Rehearing Motion also errs in confusing the issues raised and resolved by the board. As stated at page 4 and footnote 1 of the Order, “the board finds the Town has satisfactorily complied with the directives of the 2002 update portion of the Reassessment Order” and “[t]o the extent the Town performed physical inspections of waterfront properties in connection with the 2002 update, the Town went beyond the requirements of the Reassessment Order.” The Rehearing Motion is therefore incorrect in asserting (in numbered paragraph 2) that the board “concedes . . . the tax year 2002 update assessment [sic] was not performed in compliance with the Reassessment Order.” The board also finds no factual basis for the Movants’ assertion that “the only assessment of the waterfront-related properties” took place as part of the 2002 update (and not as part of the 2003 reassessment) and that the board’s conclusions to the contrary are “unsupported by the record and the evidence.” Id.

As noted, for example, in a prior pleading, “the Town of New London has undertaken a full revaluation of the community for the year 2003, and has substantially completed same.” See Town’s “Objection to New London Taxpayers’ Motion for Compliance Hearing on

¹ Most recently, the supreme court has held, in an appeal of a decision by the board of veterinary medicine: “We will not disturb the board’s credibility determinations on appeal. Weighing testimony and assessing its credibility are solely the province of the board. See Appeal of N.H. Dep’t of Health and Human Servs., 145 N.H. 211, 215 (2000); Appeal of Armaganian, 147 N.H. 158, 163 (2001). We conclude that the evidence supports [the finding of the board].” Appeal of Huston, __ N.H. __ (December 29, 2003), 2003 WL23016048. See also Order at p. 5, fn. 2, and cases cited therein.

² “It is not only the province, but the obligation of the Board to consider both the competence and credibility of witnesses, particularly expert witnesses, who appear before the Board. The observations made by the Board do not betray an intention to discredit anyone. The Board merely observed the facts that Mr. Giddings had no training or experience in mass appraisal methodologies, and his offer to assist Vision Technology came with the expectation of remuneration.”

Reassessment Order” filed on July 11, 2003. The record also includes quarterly reports filed by the Town describing its performance of a full reassessment for tax year 2003. Mr. Tarello of the Town’s contracted assessment firm, Vision Appraisal Technology (“Vision”) testified at the October 27, 2003 compliance hearing that waterfront sales were again reviewed as part of the 2003 reassessment and the waterfront assessment models were established anew along with all other property types in the Town. In brief, nothing in the record supports the Movants’ assertion that the waterfront-related properties were omitted or slighted in the 2003 reassessment. The Town entered separate contracts with Vision for the 2002 update of waterfront properties and the 2003 reassessment of all properties and no ruling has yet been made regarding the 2003 reassessment and whether it has been satisfactorily performed. For these reasons, the board described the 2002 update as a “discrete” process which did not relieve the Town of its obligation to perform a full reassessment of all properties for tax year 2003 in order to comply with the board’s Reassessment Order entered on September 4, 2001. Order at p. 9.

The board further notes a relevant recent supreme court decision also cited by the Town, Porter v. Town of Sanbornton, ___ N.H. ___ (December 22, 2003), 2003 WL 22989525. In Porter, the court first noted the availability of the tax abatement statutes as “the exclusive remedy to a taxpayer dissatisfied with an assessment. (Citation omitted).” Id.³ As in this case, the taxpayers in Porter relied on an expert’s testimony that the municipality was using a “flawed methodology” to increase the assessments on waterfront properties. The supreme court ruled, however, that “the trial court impermissibly allowed the plaintiffs to prove disproportionality by establishing

³ While the Order denies relief based upon the “Compliance Motion,” nothing precludes individual taxpayers from challenging the proportionality of their individual assessments. To the contrary, the record discloses that 92 of the 101 abatement applications filed with the Town with respect to the 2002 assessments were on “waterfront properties” and the Town granted abatements on “68 properties (61 of which were waterfront properties)”; 22 property owners filed appeals in the superior court and 7 filed appeals with the board, according to the Town. See quarterly update dated September 30, 2003 addressed to the board’s Tax Review Appraiser from the Town Administrator.

that the town could have used a more reliable methodology. While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result.” Id.

After reviewing in some detail the alleged flaws noted by the Movants, the board concluded: “[t]he Town’s methodology did improve proportionality, was market based and, when the aggregate value of the land and buildings of the waterfront properties are considered, results in assessments that are significantly more proportional than before the 2002 update.” Order at p. 7. More specifically, the board reviewed various statistics compiled in the DRA’s equalization summary (Municipality Exhibit A1) and concluded: “The uniformity of the level of assessments between non-waterfront and waterfront-related properties is the best evidence that the 2002 update . . . resulted in significantly improved assessment equity as the Reassessment Order envisioned.” Id. at pp. 4-5.

While the Movants are entitled to disagree with the board’s conclusions, the Rehearing Motion fails to establish the Order is “unlawful and unreasonable.” Cf. RSA 541:13 (Burden of Proof in administrative appeals); and, e.g., Appeal of Huston, supra, and cases cited therein.⁴

Any appeal of the board’s denial of the Rehearing Motion on December 24, 2003 must be by petition to the supreme court within 30 days of that date, as prescribed in RSA 541:6.

⁴ “RSA chapter 541 governs our review of board decisions The board’s findings of fact are presumed prima facie lawful and reasonable This presumption may be overcome only by a showing that there was no evidence from which the board could conclude as it did.”

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to: Donald E. Gartrell, Esq., Gallagher, Callahan & Gartrell, Post Office Box 1415, Concord, New Hampshire 03302-1415, counsel for the Movants; Barton L. Mayer, Esq., Upton & Hatfield, Post Office Box 1090, Concord, New Hampshire 03302-1090, counsel for the Town; Chairman, Board of Selectmen, Town of New London, Post Office Box 240, New London, New Hampshire 03257; April D. Whittaker, 992 County Road, New London, New Hampshire 03257, Lead Petitioner; Guy Petell, Department of Revenue Administration, 45 Chenell Drive, Concord, New Hampshire 03301; Mark J. Bennett, Esq., Department of Revenue, 25 Capitol Street, Room 202A, Concord, New Hampshire 03301, and Catherine A. Feeney, Esq., Feeney Law offices, Post Office Box 389, Newport, New Hampshire 03773; Interested Parties.

Date: January 9, 2003

Anne M. Stelmach, Deputy Clerk