

Anton T. and Carol J. Moehrke

v.

Town of Plainfield

Docket No.: 20508-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$428,500 (land \$213,700; buildings \$214,800) on Map 12, Lot 3900, a partially constructed single-family residence on 31.20 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Town’s methodology lacked clarity and was inconsistent and houses of similar or better quality and size received lower assessments than the Property;

(2) more specifically, the “neighborhood” condition factor (“120”) overstated the value of the land and the “quality” factor (“A9”), a rating higher than for any other property in the Town, overstated the building value; and

(3) the “correct assessment” for tax year 2003 should be \$387,023, which they calculated at the hearing by reducing the neighborhood factor (from “120” to “100”) and the quality factor (from “A9” to “A8”).

The Town argued the assessment was proper because:

(1) the Taxpayers purchased the Property for \$155,000 on December 28, 2000 in an unimproved condition;

(2) the improvements to the site (well, septic, driveway and underground utilities) and a reasonable appreciation factor (at least 1% per month) supports the land assessment;

(3) the “120” neighborhood condition factor was applied consistently to all properties on Chellis Road;

(4) the building values were determined based on sales data and information obtained from local realtors, contractors and the Town’s full-time contract assessor and are also supported by actual cost information supplied by the Taxpayers; and

(5) the Taxpayers did not provide any market value evidence to support an abatement of the Property.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$401,000 (rounded), based upon an unchanged land value (\$213,700) and an abated building value (\$187,300,

rounded) calculated by adjusting the quality component from “A9” to “A8.”¹ The appeal is therefore granted for the reasons explained below.

The Taxpayers presented a number of specific criticisms regarding the form and content of the Avitar reassessment manual (Taxpayer Exhibit No. 8) available at the time of the informal reviews during the tax year 2003 Town-wide revaluation and how this led to confusion and some difficulty in understanding the methodology used to assess the Property. While more clarity and transparency would have made the assessment process easier to understand, the Taxpayers clearly developed a sufficient understanding of the basis for their tax year 2003 assessment.

They also cited and demonstrated knowledge of the legal standards for an abatement articulated in Porter v. Town of Sanbornton, 150 N.H. 363 (2003). As noted in that case, criticism that a Town’s methodology is “flawed” or “poor” or that it “could have used a more reliable methodology,” even if justified, is not sufficient to meet the taxpayer’s burden of proving disproportionality and entitlement to an abatement. Id. at 367, 369 and 371. Accord, Verizon New England v. City of Rochester, 151 N.H. 263, 271-72 (2004) (“disproportionality, and not methodology, is the linchpin in establishing entitlement” to an abatement). Therefore, no further discussion of the perceived shortcomings of the manual is necessary here.

As noted by the Town, the Taxpayers failed to present any evidence of the market value of the Property, either as partially constructed in 2003 or as completed in 2004. They also have not disputed the Town’s estimate that construction was 35% complete as of the assessment date (April 1, 2003) or that the Town’s level of assessment was 100% for tax year 2003. Thus, the

¹ Changing this factor reduces the multiplier from 2.55 to 2.2 in the calculations shown on the tax year 2003 assessment-record card, as follows: \$65 (base rate) times 0.98 (story adjustment) times 2.2 (quality adjustment) times 0.8295 (size adjustment) = \$116.25 per square foot times 4,633 (square feet) = \$538,586 (building cost new) times 32% (65% unfinished plus 3 percent functional and other depreciation) = \$172,300 (rounded) plus \$15,000 for extra features shown on assessment-record card = \$187,300 (rounded) total building value.

board is unable to find the assessment on the Property is disproportional to market value and the general level of assessment in the Town. Id., at 272 (“to carry the burden of proving disproportionality, a taxpayer must establish that the taxpayer’s property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town,” citing Porter, 150 N.H. at 369).

In this regard, the Taxpayers cannot meet their burden of proving disproportionality based on references to other properties that may have higher market values but lower assessments because the alleged underassessment of others is not a sufficient ground for an abatement. See, e.g., Appeal of Cannata, 129 N.H. 399, 401 (1987). Thus, while the board has considered the extensive evidence presented by the Taxpayers regarding other high value properties in the Town and their assessments (see, e.g., Taxpayer Exhibits 2, 3, 5 – 7), this evidence is insufficient to establish a basis for an abatement.

At the hearing, the Taxpayers’ two points of disagreement with the assessment concerned the neighborhood factor applied to the land and the quality factor applied to the building. Each of these points is discussed further below.

The board finds no basis for reducing the neighborhood factor. A neighborhood factor is a means of taking into account differences in how the market values land in different areas of a town and is generally applied to a standard “base rate.” In this case, the base rate was \$51,000 for the primary site and the Taxpayers asserted the “120” neighborhood factor (applied to all properties on Chellis Road, including the Property located at 171 Chellis Road) is too high because present activities on several others diminish their enjoyment of the Property. The “Marsh” property, at 133 Chellis Road, is owned by an individual who occasionally operates wood processing equipment on part of it (the “wood lot”) in the morning before going to other

jobs; according to the Taxpayers, this creates some noise issues for them when they are bird watching or walking their dog during these times. They also testified the “Putnam” property, at 84 Chellis Road, where a “concrete form lot” was operated, has “unsightly uses and operations” because it had been used for contractor storage and concrete processing operations and has an unfinished building. Marsh is an abutter and Putnam is located across the road and is at a farther distance from the Property.

The board has reviewed the photographs of the Marsh and Putnam properties (Taxpayer Exhibit No. 4). Especially in a rural area, it is quite possible for a neighborhood to have some mix between old structures and new construction, established residents (who work the land actively) and those who seek to enjoy and maintain a pristine setting.

The Town responded that the structures complained of on these properties are not visible from the developed home site on the Property and that, in any event, their existence does not require a change in the neighborhood adjustment. The board agrees. As noted, the Town uniformly applied the “120” factor to all properties located on Chellis Road, including the two the Taxpayers complain about. See also Municipality Exhibit No. B, ¶ 18 (in 2003, there were apparently “some 311 parcels with a land condition greater than 100” in the Town). The board finds the application of this factor did not result in disproportional assessment. The Taxpayers acquired the undeveloped land in December, 2000, over two years before the assessment date, for \$155,000 and then made substantial improvements to it, including adding a well and septic system. The value shown for the primary site is \$168,300 on the assessment-record card. This value includes application of the “120” factor and is not disproportional when the purchase price, the cost of improvements and reasonable appreciation in land values are considered. Sales of other properties of roughly comparable acreage for example, 173 Chellis Road (Wendt, an

abutter) and 175 Chellis Road in January, 2001 for \$160,000 each also support the Town's land value.

Less supportable, however, is the Town's application of an "A9" building factor. The Taxpayers testified, without dispute, that no other home in the Town received a factor higher than "A8." This includes some houses of comparable and arguably higher quality, such as the "Wendt" and "Romke" properties (Taxpayer Exhibits No. 3 and No. 5). In addition, as of the assessment date, the building on the Property was only partially (35%) complete. The Town's attempt to emphasize the cost information submitted by the Taxpayers to justify the higher factor is not persuasive because there was evidence of substantial construction, and even higher spending, on other properties in the Town which did not receive the higher factor and, of course, costs incurred do not necessarily equate to value.

Consequently, and for the purpose of improving assessment consistency and equity, the board finds the building quality factor should be lowered to "A8," which, as calculated in footnote 1, results in a total abated assessment (land and buildings) of \$401,000 for tax year 2003. For tax year 2004, when the construction was complete, the Town should also apply the "A-8" factor and adjust the assessed value accordingly (but the board has not calculated the resulting exact assessment for this year²).

In light of these findings and rulings, the board concludes the "view" requested by the Taxpayers is unnecessary and their request is denied. The Taxpayers' "Request for Administrative Notice" of another tax abatement case in superior court is also denied because it is not applicable to the findings made in this Decision.

² Comparison of the 2003 and 2004 assessment-record cards submitted show some differences in gross and effective building areas, traceable to an "open porch" described on the assessment-record card, which results in a difference of less than \$8,000 in the computed "building cost new" amount.

If the taxes have been paid, the amounts paid on the value in excess of \$401,000 in tax year 2003, and on the value in excess of the corresponding adjusted assessment for 2004 (to be calculated by the Town), shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use that tax year 2004 assessment for subsequent years. RSA 76:17-c, I and II.

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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Anton and Carol Moehrke, PO Box 202, Meriden, NH 03770, Taxpayers; Gary J. Roberge, Edward Tinker, and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representatives; and Chairman, Board of Selectmen, Town of Plainfield, PO Box 380, Meriden, NH 03770.

Date: 5/17/06

Anne M. Stelmach, Clerk