Town of Plainfield Reassessment

Docket No.: 20552-04RA

DECISION

I. Procedural History

The board opened this docket on September 17, 2004 to investigate one discrete aspect of the "Town's" reassessment because of a July 29, 2004 letter and enclosures from taxpayer Patrick J. Magari. In his letter, Mr. Magari made various allegations of shortcomings in the determination and application of view factors by Avitar Associates of New England, Inc. ("Avitar"), the Town's contract assessor, with respect to the tax year 2003 reassessment.

The board gave the parties, including the Town and Avitar, twenty (20) days to respond to the allegations in writing. Upon review of the various documents submitted, the board, on November 1, 2004, ordered its RSA 71-B:14 review appraisers to gather facts and submit a written report ("Report") to the board with respect to the allegations. Ms. Joan Gootee, one of the board's staff review appraisers, submitted her Report dated November 18, 2004, which was distributed to the parties.

On February 17, 2005, the board held a noticed hearing to examine the issue in further detail. The purpose of the hearing was to allow the board to gather further evidence and to

determine "whether a need exists for the board to assert its RSA 71-B:16 and RSA 71-B:16-a authority to order any necessary remedial actions." See Order dated December 23, 2004.

The board, in that hearing notice, ordered representatives of the Town and Avitar to be present, to bring the complete assessment manual and provide copies of the view section of the manual, including color photographs and any additional documentation explaining how the view adjustments were determined. The Town and Avitar complied with that order. Also in attendance at the hearing were Mr. Magari, another taxpayer, Brad W. Wilder, department of revenue administration ("DRA") representatives and others.

II. Board's Rulings

The board has carefully considered all of the evidence presented, including the Report and other documentation provided prior to and at the hearing, as well as the testimony of Mr. Magari, Mr. Wilder, the Avitar, Town and DRA representatives and Ms. Gootee. Based on this evidence, and for the reasons discussed below, the board finds that no board-ordered remedial action is warranted at this time and therefore closes this docket.

A view factor was applied by Avitar to certain properties as a "condition" adjustment to the land portion of the total assessment to take into account the influence a view may have on the market value of a property and therefore its assessed value. Avitar has stipulated that errors were made in putting together and labeling the "View Manual" which was used to illustrate the application of view factors by including photographs with view factors assigned.

According to Avitar's representatives (Gary Roberge and Edward Tinker), this document is more properly considered a "view catalog" of how various sample views in the Town compare with each other. These samples help the assessor estimate how various views contribute to overall market value for assessment purposes and also help during the informal review process if

taxpayers have questions regarding how the view (condition) factor assigned to their properties compared to others in the Town.

As noted in the Report, Avitar reportedly supplied three successive versions of the "View Manual" to the Town over the course of the reassessment. The second version overstated the number of views from qualified sales: in fact, there were only three, not eight, qualified sales in the document and Mr. Magari discovered this and other errors and brought them to the attention of the Town and Avitar.

Avitar subsequently acknowledged and corrected a number of these errors. The "Views Manual 2003" produced at the hearing (Municipality Exhibit A), for example, more correctly shows and identifies photographs of views on three "qualified" sales, several other ("nonqualified") sales and other properties in the Town that had not been sold in the relevant time frame.

By their nature, view factors cannot be objectively determined and are, as Avitar stated, "a very subjective item." See Municipality Exhibit B ("Samples and Adjustment Factor [for] Views").[1] This is because, among other things, no two views are the same and market participants, as well as individual assessors or appraisers, may value the amenity differently. Nevertheless, it would be improper to conclude that views should not be taken into account to arrive at a proportional assessment (based on market values and the level of assessment), even if the methodology employed can be shown to lack absolute mathematical precision.

[1] In this document prepared for the Town, Avitar explains:

> "[Views are] a very subjective item which is why we draw from local sales and have two people working together to view the entire town to set the view adjustments, as well as create a sample of views and factors to use during the review process for consistency. In many cases, including [the Town], there are not enough sales to develop factors for every variance of views and as such, we have to draw on our experience across the state when views v[a]ry dramatically with limited sales data. Pictures help for consistency, sales help for setting the value of various views in town, but experience is need[ed] to establish the factor for less[e]r and greater views than developed from the sales, but in comparison to the individual sales."

The Report indicates Avitar relied on only four sales in the Town to determine view factors and that "[t]hese sales are able to support view factors up to 400." The Report notes, however, that there are properties with better views than any of these sales in the Town, but that there were no sales to support a higher view factor.

In these circumstances, or when there are only a limited number of sales in a municipality, it is prudent for an assessor to analyze available sale properties with views in neighboring areas. In addition, an assessor should provide better documentation and more 'transparency' (readily understandable to Town officials and taxpayers) of the process employed in setting and adjusting view factors.

Based upon a field review of properties in the Town, Ms. Gootee concluded in the Report that she "found the [view] factors being applied consistently, with marginally larger factors for slightly superior, or more panoramic views. . . . I did not discern any glaring inconsistencies or egregious adjustments." The board places weight on these conclusions.

The relevant question then becomes whether Avitar's admitted use of subjective, but consistent judgment in determining and applying view factors is so deficient that the quality of the revaluation of the Town fell below the "satisfactory" standard the board is required to apply by statute when ordering a reassessment. See RSA 71-B:17. The board concludes that it did not.

The board's investigative authority as it pertains to this docket is contained in RSA 71-B:16, II. This statute requires findings that property has either not been assessed or "has been fraudulently, improperly, unequally, or illegally assessed." The board is unable to make any findings of non-assessment, 'fraud' or 'illegality' here, and there has been no showing of a fundamental or systematic problem of 'improper' or 'unequal' (disproportional) assessments either.

The evidence presented indicates the Town has approximately 1,200 taxable parcels and only about 100 of these properties have views associated with them. The vast majority of the properties in the Town have land values that were unaffected by the application of any view factor.

The Town Manager, Mr. Steve Halleran, testified the tax year 2003 reassessment resulted in no more than four or five tax appeals (including one filed by Mr. Wilder and still pending in the superior court). Even if those relatively few appeals ultimately result in tax abatements, this does not mean the reassessment as a whole was tainted with improper or unequal assessments. The view factor applied to Mr. Wilder's property, for example, is just one of a number of elements influencing its assessed value. When determining proportionality, it is value as a whole, rather than any individual element of value pertaining to either land or buildings, that is crucial because that is how the market looks at value. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205 (1899).

The board finds it unlikely that alleged errors in how a view factor was applied to individual properties would affect the quality of the reassessment as a whole, without significantly impacting the standard statistics to measure overall quality discussed further below. In other words, more is required in a reassessment investigation than demonstrating that one or more taxpayers disagree with Avitar's determination of the appropriate view factors that should have been applied, since the land assessment reflecting a view factor (as a condition adjustment) is but one component of the overall assessed value of each property. Such individual

disagreements can and should be resolved through the tax abatement and appeal process, not a reassessment, as further noted below.

Mr. Halleran indicated the Town is satisfied with the quality of the reassessment performed by Avitar and that the work was done well. As noted in the October 6, 2004 letter to the board from the Town selectpersons: "[w]e regret the errors that Avitar acknowledges and agree that the [T]own may have been better served by a more complete discussion about how Avitar intended to quantify the value created by a view." They also state their belief the "mass reappraisal [reassessment] was reasonably well done. There is no doubt that views add value." They conclude by saying: "[w]e do not believe that any of Avitar's mistakes sink to the level of fraud. . . . George Hildum, the [T]own's appointed assessor, is also available. . . . Mr. Hildum provided supervisory assistance to the [T]own during the revaluation and is charged with maintaining the finished project into the future."

Avitar no doubt bears some responsibility for this turn of events because it did make several unfortunate and mistaken representations regarding view factors, which Mr. Magari has emphasized. The board believes these mistakes, however, do not rise to the level of culpability alleged by Mr. Magari.[2]

More to the point, the mistakes associated with Avitar's work were not so fundamental or systematic in nature so as to cast doubt on the overall quality of the reassessment. The board notes in this regard the Town's equalization ratios and COD's, as reported by the DRA, were, respectively, 100% and 11.3% for tax year 2003 and 89% and 14.4% for tax year 2004. These

[2] Some of the accusations leveled against Avitar did not withstand scrutiny. For example, Robert Boley of the DRA testified that the criticisms of Avitar attributed to him (in an October 10, 2004 letter from Mr. Magari to the board) regarding the application of view factors were not accurate.

statistics are quite reasonable in light of published standards[3] and indicate the Town was able to achieve a satisfactory level of proportionality and degree of variability, despite a rapidly appreciating market in a relatively small municipality. If Avitar had in fact made fundamental and systematic errors in specifying and calibrating its reassessment model with the inclusion of view factors, one would expect the statistics noted above to be far from, rather than within, an acceptable range.

Individual tax abatement requests and appeals, even if some are ultimately found to have merit, are an accepted part of the statutory process and do not necessarily imply a need for a Town-wide reassessment. See, e.g., RSA 76:16, RSA 76:16-a and RSA 76:17. If an individual property like Mr. Wilder's, for example, has a view factor that is allegedly too high and unsupportable by the market, appropriate recourse is an individual abatement request and tax appeal, a process he is already pursuing, not a Town-wide reassessment.

In carrying out its statutory responsibilities, the board has also considered each of the remedies proposed by Mr. Magari.[4] The first proposed remedy, a full revaluation of the Town, is simply too extreme and unwarranted, even if Avitar and not the Town could somehow be required to ultimately absorb ("cover") this additional expense. The board finds the second proposed remedy, "employ[ment of] a third party to reduce all view factors in an asymptotic fashion . . .," is also unwarranted in this case. The Town has a qualified assessor, George Hildum, who is independent of Avitar and is available to monitor the assessments made and to develop and implement any needed corrective actions (without the need for a board order) when

[3] See International Association of Assessing Officers, Standard on Ratio Studies, Table 7 (July, 1999): for a smaller, rural jurisdiction, a median (a measure of central tendency) between 0.90 and 1.10 and a COD (coefficient of dispersion) of 20% or less is considered acceptable in the year of the reassessment.

[4] See Mr. Magari's presentation to the board, Taxpayer Exhibit 1.

assessments are made each year. See RSA 75:8 and 75:1. The remaining proposed remedies are also extreme and unwarranted[5] and demonstrate some misunderstanding of the board's role and statutory authority in the reassessment process.

The board has noted the considerable time and attention devoted to the issue of view factors by Mr. Magari, in particular, supported by Mr. Wilder. Mr. Magari stated he withdrew his own property tax appeal and has not deposited a check for a partial abatement granted by the Town, and this may demonstrate his motivation is based on broader concerns and "idealism" rather than a more narrow interest on reducing his own taxes. Notwithstanding the obviously heated and passionate manner in which the view factor issue was presented and debated, however, the board must apply an element of rationality and 'common sense,' keeping in mind the interests and needs of the Town as a whole and the role of the reassessment process in assuring proportionality.

The board's focus is on the overall quality of the reassessment in the Town rather than on any inadvertent errors that may have occurred regarding the presentation of view factors, which Avitar and the Town have acknowledged and addressed. The board finds the application of view factors involves some amount of subjective judgment which must be recognized and understood. The board finds insufficient evidence that Avitar's view factor methodology, while it could have been improved, resulted in less than a satisfactory reassessment for the Town. Cf. RSA 71-B:17; see also Porter v. Town of Sanbornton, 150 N.H. 363, 369 (2003) (even a less "reliable" or "flawed methodology," used by municipality, and challenged by certain taxpayers, "does not, in

[5] See Taxpayer Exhibit 1, where Mr. Magari proposes that Avitar "never work in Plainfield again" and that its behavior be referred to the "Real Estate Appraiser Board." The former is a political question for the voters and selectmen in the Town; the latter is inapplicable because the testimony reflects that neither Avitar representative responsible for the reassessment and present at the hearing (Mr. Roberge or Mr. Tinker) is licensed or subject to discipline by the Real Estate Appraiser Board. See RSA Ch. 310-B (State Licensed or Certified Real Estate Appraisers). Those who make appraisals on behalf of municipalities for tax assessment purposes, on the other hand, are subject to monitoring and supervision by the DRA. See, e.g., RSA 21-J:11.

and of itself, prove" disproportional assessment and each taxpayer "bears the burden of demonstrating that he or she is paying a higher amount than he or she ought to pay." (Citation omitted.)).

For all of these reasons, the board finds no remedial action should be ordered insofar as the application of view factors in the Town's tax year 2003 reassessment is concerned and therefore closes this docket.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Chairman, Board of Selectmen, Town of Plainfield, Post Office Box 380, Meriden, New Hampshire 03770; Gary J. Roberge and Edward Tinker, Avitar Associates of New England, Inc., Post Office Box 980, Epsom, New Hampshire 03234, Contract Assessors for the Town; Guy Petell, State of New Hampshire, Department of Revenue Administration, 57 Regional Drive, Concord, New Hampshire 03301; Patrick J. Magari, 61 Eaton Road, Plainfield, New Hampshire 03781; and Brad Wilder, 130 Hedgehog Road, Plainfield, New Hampshire 03781, Interested Parties.

Date: April 5, 2005

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Anne M. Stelmach, Clerk