

Richard and Elizabeth Harding Laramee

v.

Town of Tuftonboro

Docket No.: 22089-05PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of \$411,300 (land \$201,500; buildings \$209,800), on Map 2/Lot 1/Sub 31, a single family home on a 1.015 acre lot (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Town’s assessment of the amenity value is excessive;
- (2) the Town’s methodology in assessing the amenity value is inconsistent in the subdivision;

(3) the site value is not proportionately assessed with comparable lots in the association with better locations and views of the beach; and

(4) the assessment, when adjusted by the amenity value, should be \$333,200.

The Town, through its contracted assessor, Avitar Associates of New England, Inc.

(“Avitar”), argued the assessment was proper because:

(1) the lots with views of the beach were not assessed at a higher rate because they were offset by traffic and noise of the use of the beach;

(2) the Taxpayers’ presentation was based entirely on methodology without any evidence of market value;

(3) if the Town accepted the Taxpayers’ amenity value, sales of Maps 2-1-35, 2-1-37 and 2-1-39 would not be assessed proportionately (and at market value) as the assessment to sale ratios would be .7755, .8318 and .8219 respectively; and

(4) the Town’s methodology is appropriate and the Taxpayers have failed to carry their burden to show the assessment was disproportionately assessed.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

All assessments must be proportional to market value. RSA 75:1. In 2005, Avitar performed a reassessment and the department of revenue administration’s median ratio was 100.1% indicating the general level of assessment achieved market value.

Avitar’s assessment methodology employed during the reassessment and discussed extensively during the hearing was comprised of three main components which it estimated from the market: 1) the site value for the primary residential lot; 2) an amenity value to reflect the use

and enjoyment of the shared common beach area and associated docks; and 3) the contributory value of the improvements to the land. The Taxpayers focused exclusively on the \$108,000 amenity value portion of the assessment arguing that it was excessive because the value of the common beach area, if assessed as a standalone lot and allocated to the 30 lots within the Colonel Tuftonboro Estates subdivision (“CTE”), would add \$29,900 (rounded). The board finds the Taxpayers’ calculation does not reflect the sticks of the bundle of rights being valued in the Taxpayers Property. The CTE is a “funnel” subdivision where the design is intended to maximize a limited amount of waterfront amenity (in this case, Lake Winnepesaukee) to many rear lots that do not front on the water. This form of development and the economics that drive it are common in New Hampshire and based on the board’s experience and knowledge¹ result in a greater collective value to the benefited lots than the value of the waterfront lot.

The proper way to estimate the value of the waterfront access sticks in the Taxpayers’ bundle of rights is exactly as employed by Avitar in its assessment manual by the land residual method. This method subtracts from market transactions the value of other components of the property such as the ability and value to construct a dwelling and the contributory value of the improvements that have been determined through other market extractions or replacement cost estimates. The board has written extensively about this methodology in previous orders including Town of Tuftonboro [Reassessment] Order, Docket No. 21491-05RA, June 19, 2006 and Town of Orford Reassessment Order, Docket No. 21473-05RA, November 3, 2005. In fact, in Tuftonboro at page 9, the board ordered the documentation provided by Avitar to the Town be

¹ The agency’s experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

improved so that it would be “similar to that presented in Orford for the applicable base rates and major adjustments for Tuftonboro along with any explanations and discussions to facilitate how the analyses and correlated values were derived and utilized in the assessment models.” In fact, in its “findings and intent of 2006 amendments” relative to the new provisions of RSA 21-J:14-b, I requiring documentation based on USPAP Standard 6 be part of the assessment review guidelines, the legislature observed: 1) “[d]ocumentation of the analysis of market data used to set values are needed by the governing body and the taxpayers in the state of New Hampshire.”; and 2) the “documentation, assumptions, and calculations shall be transparent for our citizens....”

In short, the Town and Avitar, by performing the residual analysis of the one sale available in CTE during the time of reassessment (“Tamkin” sale, Map 2-1-35) was attempting to measure and document the contributory value of the shared beach lot from the market. This methodology is entirely in keeping with the board’s prior orders and the documentation envisioned by the legislature’s 2006 amendment to RSA 21-J:14-b. The Taxpayers’ methodology does not measure the contributory value of the beach lot but is simply an arithmetic allocation of the hypothetical value of the bundle of rights of the beach lot, if it was not held in common by the 30 owners. Thus, the Taxpayers’ methodology inherently falls short of estimating the contributory value of the waterfront amenity that benefits and is transmissible with the Property.

A remaining question, however, is whether the \$108,000 value derived from only one sale (the Tamkin sale) was reasonably representative of the common beach lot contributory value. Avitar, in its June 2, 2008 letter to the Taxpayers, noted other improved properties (Maps 2-1-37 and 2-1-39) sold in May 2006 and those sales, while indicating lower residual values for

the waterfront amenity, were generally supportive of the Tamkin sale residual value. The parties also discussed a January 2007 sale of Map 2-1-32 which sold for \$265,000. Avitar argued that such sale was not an arm's-length transaction because it had not been listed on the general market and the grantor retained the right to live there for six months after the closing. Given the paucity of transactions within CTE, the board would not outright dismiss such a sale as Avitar suggests and in fact adjusted the sale price, utilizing judgment and experience, and results in a residual indicated amenity value similar to those as shown by the other two subsequent sales. Consequently, while the board, with the benefit of hindsight of these three additional sales, concludes the contributory amenity value may have been slightly lower than the \$108,000 figure utilized during the 2005 reassessment, we do not conclude that the \$108,000 value added to the site value in the depreciated improvement values resulted in an assessment disproportionate to market value. Market value is never one absolute empirical number. Rather, market value is more accurately represented by a range of value. In this case, the board finds the Taxpayers did not submit convincing evidence that the Town's assessment exceeded a reasonable market value range for the Property.

The board need not address or resolve in this appeal the Taxpayers' argument that Avitar was inconsistent in its amenity value between improved and unimproved lots and lots with views versus those without because the Taxpayers' estate is comprised solely of an improved lot without a view of Lake Winnepesaukee. If indeed Avitar's methodology resulted in the underassessment of such lots (and the board makes no finding to that effect), the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and

measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id.

Last, as noted throughout this decision, the Taxpayers' arguments focused largely on Avitar's methodology and no original market analysis or opinion of market value was presented by the Taxpayers. The Taxpayers' recommended assessed value was based on a recalculation of Avitar's methodology. In Porter v. Town of Sanbornton, 150 N.H. 363 (2003), the supreme court held that flawed methodology alone does not establish that an assessment is disproportionate. There, as in this appeal, "the plaintiffs produced no evidence regarding the market value of their properties. Rather, they attempted to prove disproportionate tax burdens by demonstrating that the town employed a flawed method." Id., at 368. The court reinforced its Porter holdings in Verizon New England Inc. v. City of Rochester, 151 N.H. (2004) by again noting "disproportionality, and not methodology, is the linchpin in establishing entitlement to a petition for abatement."

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(g). 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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Richard and Elizabeth Harding Laramee, PO Box 338, Melvin Village, NH 03850, Taxpayers; Chairman, Board of Selectmen, Town of Tuftonboro, PO Box 98, Center Tuftonboro, NH 03816; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway Chichester, NH 03258, Contracted Assessing Firm.

Date: 6/24/08

Anne M. Stelmach, Clerk