

Town of Nottingham

Docket No.: 21520-06RA

ORDER

On September 18, 2006, the board held a show cause hearing on a February 10, 2006 petition for reassessment (“Petition”) filed with the board by Eugene T. Reed (“Lead Petitioner”) pursuant to RSA 71:B-16, IV with respect to the 2005 statistical update performed by Avitar Associates of New England, Inc. (“Avitar”) for the Town of Nottingham (“Town”). The Lead Petitioner testified extensively and submitted certain documents (Taxpayer Exhibit No. 1); no other petitioner or taxpayer testified in support of the Petition. Also testifying at the hearing were Gary Roberge and Loren Martin of Avitar, Charles A. Brown, Town Administrator, and Peter Bock and Mary Bonser, members of the Town Board of Selectmen. Representatives of the department of revenue administration (“DRA”) were present at the hearing but did not testify.

The board gave the Town additional time, until September 25, 2006, to review and submit, if it felt it was necessary to do so, a response to Taxpayer Exhibit No. 1, with a copy of any response to the Lead Petitioner. The Town was also instructed to provide the board with a copy of the Town’s assessment manual (“Manual”) developed and used for the 2005 update. Except for these items, the board closed the record at the September 18, 2006 hearing.

The Town did submit a letter on September 22, 2006 clarifying the number of informal hearings held (227) and noted they resulted in a total of 336 assessment changes. The Town asserted the number of changes did “not reflect a bad job but rather an assessor willing to update the values based on additional information received.” Enclosed with the Town’s letter was a list of the sales prices and assessments of properties sold since April 1, 2005.

As noted in the board’s prior order scheduling this hearing, a “Report” was prepared and distributed by the board’s senior review appraiser outlining her findings as to the assessment practices and documentation employed in the Town’s 2005 assessment update. The Report also contained an assessment-to-sale ratio analysis of sales that occurred between August 2005 and March 2006, subsequent to the update between August 2005 and March 2006. In summary, the Report indicated the 2005 assessment update achieved an overall median ratio of 101% with a coefficient-of-dispersion (“COD”) of 9.68% and a price-related differential (“PRD”) of 103%. The Report concluded there was no evidence of selective reappraisal. The Report also indicated the “zones, neighborhoods, and condition factors were applied in a consistent and logical manner” (Report at 2). The subsequent sales analysis (Report at 11-12) indicated most of the strata fall within acceptable assessment ranges with the exception of “camp” and waterfront related sales but, given the small number of sales within those strata, the assessment indices are inconclusive. After inspection of the Manual, sales analysis, assessment-record cards, and tax maps, the Report concluded they appear to comply with the appropriate statutes and administrative rules.

The Lead Petitioner testified he had “no dispute” with the findings of the Report. Avitar, for its part, stated it felt the Report was “good”.

BTLA's Rulings

RSA 71-B:16 authorizes the board to order a reassessment when it determines assessments have been “fraudulently, improperly, unequally, or illegally assessed¹”.

Further, RSA 71-B:16-a contains the criteria for the board to consider before ordering any reassessment or other remedial action.²

After considering the Lead Petitioner's arguments contained in Taxpayer Exhibit No. 1, the testimony and evidence of the selectmen and Avitar representatives, reviewing the Manual, and the Report, the board concludes, for the following reasons, there is no basis for ordering a reassessment or other remedial action relative to the 2005 assessment update.

The board finds the statistical update resulted in acceptable equity based on the various ratio studies contained in the Manual, in the Report and in DRA's 2005 equalization survey.

¹ RSA 71-B:16 in part provides:

The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state:

...

II. When it comes to the attention of the board from any source, except as provided in paragraph I, that a particular parcel of real estate or item of personal property has not been assessed, or that it has been fraudulently, improperly, unequally, or illegally assessed; or

III. When in the judgment of the board, determined in accordance with RSA 71-B:16-a, any or all of the property in a taxing district should be reassessed or newly assessed; or

IV. When a complaint is filed with the board alleging that all of the taxable real estate or taxable property in a taxing district should be reassessed or newly assessed for any reason, provided that such complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the taxing district, whichever is less; or

V. When the commissioner of revenue administration files a petition with it pursuant to RSA 21-J:3, XXV.

² RSA 71-B:16-a states: Prior to making any determination to order a reassessment or a new assessment under RSA 71-B:16, III, the board shall give notice to the selectmen or assessors of the taxing district and, if requested, hold a hearing on the matter at which the selectmen or assessors shall have the opportunity to be heard. The board shall not order any such reassessment or new assessment unless it determines a need therefore utilizing the following criteria:

- I. The need for periodic reassessment to maintain current equity.
- II. The time elapsed since the last complete reassessment in the taxing district.
- III. The ratio of sales prices to assessed valuation in the taxing district and the dispersion thereof.
- IV. The quality of the taxing district's program for maintenance of assessment equity.
- V. The taxing district's plans for reassessment.

Avitar analyzed over 300 sales that occurred between October 1, 2003 and June 30, 2005 and performed an assessment-to-sale ratio study as of April 1, 2005 with an overall median ratio of 102% and a COD of 8.77%. DRA, as part of its responsibility to equalize valuations, analyzed sales occurring between October 1, 2004 and September 30, 2005 and computed a median ratio of 102% with a COD of 6.20% as of April 1, 2005. The Report reviewed sales that occurred subsequent to the statistical update (between August 1, 2005 and March 1, 2006) and, after adjusting for market conditions, determined a median ratio of 101% with a COD of 9.68%. The Report's conclusions, because it uses sales subsequent to the update to test its accuracy, in particular, indicate the assessment parameters established were generally reflective of market. As a result, the board concludes the statistical update has satisfactorily met the first three criteria of RSA 71-B:16-a.

The Lead Petitioner asserted Avitar's methodology and data were flawed and failed to produce equitable assessments in several respects. These concerns are addressed below.

The Lead Petitioner argued Avitar's time trending utilized in the Manual was "flawed and inappropriately used for the revaluation project." We disagree. Avitar's analysis of paired sales is a reasonable way to estimate the change in market conditions during the time period of its sales' analysis. This analysis appears to have been reasonably done to take into account any differences in the properties (such as improvements) that may or may not have occurred between the sale dates. After performing the paired sales analysis and investigating the market and speaking to buyers, sellers and realtors, Avitar concluded a 1% per month market adjustment was more appropriate than the 1.5% average indicated by the paired sales analysis. The board finds this type of analysis and correlation utilizing general market information and appraisal judgment

is appropriate. One indication of the reasonableness of Avitar's time trending adjustment is in the acceptable assessment statistics indicated by Avitar's, DRA's and the Report's ratio studies.

The Lead Petitioner also asserted the physical data relied upon during the statistical update had not been adequately maintained. The board finds evidence to the contrary. The Town testified it has had an agreement with Avitar, both in the past and currently, for random re-inspections of the physical data listings of 20% of the properties each year. In 2005, the Town did forego that re-inspection because of the abnormally high number of new buildings constructed which caused above budget expenditures for those "pickups". However, with the high number of new buildings listed for the first time in 2005 and an increase in those scheduled to be re-inspected in 2006, the Town testified it was back on track with its five year cycle. At the end of the five year current data re-inspection cycle, the Town plans to perform a valuation update to conform with its RSA 75:8-a responsibilities to value property anew every five years.

The Lead Petitioner further asserted Avitar, in its Manual, was advocating selective reassessments "without regard to [the] overall Town-wide level of assessments." The testimony of Avitar representatives indicated otherwise, however. Avitar recommended, in the time trending section of the Manual, that the Town may want to monitor sales of waterfront property, as the PRD of 103% was at the high end of the acceptable range, largely due to sales of waterfront property subsequent to the assessment update influencing that calculation. The Town acknowledged if any update was to be performed for any distinct strata of property such as waterfront, a review of the level of assessment of the entire Town would have to be performed to target the proper level for any such adjustment of a stratum. Anticipating this possibility is commendable and compliant with the provisions of RSA 75:8 that the selectmen annually review and adjust any assessments that become disproportional.

A number of the Lead Petitioner's complaints relate to his assertion that the Manual contains inadequate documentation and analysis of the various factors (neighborhood, view, base lot, etc.) and is not compliant with recent BTLA reassessment orders dealing with such issues. The board finds the analysis and other documentation contained in the Manual are adequate to provide a reasonable understanding as to how Avitar analyzed certain sales to arrive at the base rates and neighborhood adjustments utilized during the reassessment. While the board finds such analysis could and, in the future, should be expanded to be inclusive of more sales and more illustrative of how the various neighborhood factors (or other town-wide factors) were determined from the market, Avitar's explanation of the process, its sales analyses and the various price schedules in the Manual are sufficient for either the assessing officials or taxpayers in the Town to understand what market data was utilized in establishing the assessment models and how they were applied to the individual assessment-record cards. Ideally, an expanded use and grouping of sales would be desirable to show which sales provide support to Avitar's neighborhood delineations initially determined on its preliminary drive through Town. However, as the Avitar representatives testified, the neighborhood delineations had a maximum variation of only 60% (20% below and 40% above the 100% neighborhood code "E" factor) and such neighborhood delineations, based on the Report and the various ratio study results, appear to be consistent and supported by market data. Testimony was also presented that these neighborhoods were visually depicted on an overall neighborhood map available at the Town office for public inspection.

Avitar representatives testified the view adjustments in Town were relatively modest (\$10,000-\$50,000 relative to base lots of \$100,000, plus or minus) and were based primarily on their judgment as there was a lack of any sales significantly influenced by views in Town at the

time of the statistical update to extract the adjustments from. The Town also noted that Nottingham does not contain extensive views and thus the view adjustments were limited to a few number of properties and, as noted above, were applied in a conservative fashion.

In short, while the board encourages improved and expanded analysis and documentation, as it has in other reassessment orders, the analyses and documentation contained in the Manual are understandable and support the basic assessment parameters utilized. The board agrees with the Town that to require a retrospective creation of further documentation would not, in this case, be a reasonable expenditure of resources given that what exists is understandable and the Town testified only 12 abatement requests had been filed as a result of the assessment update. Any individual grievances are best reviewed through the individual abatement and appeal provisions provided by statute rather than the board ordering any Town-wide reassessment or other remedial order. Consequently, the board concludes the statistical update and the Town's future plans for reviewing and maintaining the assessment data and equity fulfill the last two criteria of RSA 71:B-16-a.

At the close of the hearing, the Town requested costs asserting the Petition was frivolously brought. The Lead Petitioner argued against the imposition of such costs. While the board understands the Town's and Avitar's apparent frustration in having to respond to the Lead Petitioner's inquiries at the local level (see Municipality Exhibit No. A) and then expend additional resources in defending the statistical update, the board denies the request as it finds the Lead Petitioner's claims were not so frivolous to warrant assessing costs. As the board recently noted in Town of Tuftonboro, Docket No. 21491-05, June 19, 2006:

[T]he legislature has provided this process for New Hampshire taxpayers to challenge, on a systemic basis, the need for improved assessment equity throughout a municipality in addition to appealing their individual

assessments through RSA 76:16-a or 17. While certainly petitions and appeals require municipal officials and their contractors to invest significant time, they are important processes for taxpayers to audit the assessing function entrusted to municipalities in the first instance. These RSA 71-B:16, IV petitions are part of the “auditing procedures” and “enforcement measures” to ensure equitable market related assessments as discussed in Sirrell v. State, 146 N.H. 364, 374 and 384 (2001). (“[I]n 1999, no comprehensive auditing procedures are yet in place to verify that assessments are being performed correctly and accurately at the local level.” The State must implement effective enforcement measures to ensure assessments are proportional.)

Avitar may believe it to be inefficient and troublesome to have to explain and defend how assessments were derived and calculated; however, our representative form of government requires that those entrusted (either directly by statute or indirectly by contract) with the important responsibility of assessing and equitably dividing the tax burden be responsive and accountable to those who are directly and immediately impacted: the taxpayers. By its very nature, a government with built-in checks and balances may result in some inefficiency; however, that is one of the necessary costs so that no one branch of government dominates and so that its citizens have recourse. See Opinion of the Justices, 141 N.H. 562, 569 (1997); Town of Littleton v. Taylor, 138 N.H. 419, 423 (1994); and Foote v. State Personnel Commission, 116 N.H. 145, 148 (1976).

For all the reasons noted above, the board finds no basis exists for it to assert jurisdiction and order a reassessment or any other remedial activity under RSA 71:B-16. As noted in the board’s Show Cause Order and Hearing Notice (at 2), the burden of proof rests with the Lead Petitioner. Consequently, the board closes this docket.

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 this date been mailed, postage prepaid, to: Eugene T. Reed, 8 Michela Way, Nottingham, NH 03290, Lead Petitioner; Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessor; Town of Nottingham, Chairman, Board of Selectmen, PO Box 114, Nottingham, NH 03290; and Guy Petell, State of New Hampshire Department of Revenue Administration, 57 Regional Drive, Concord, NH 03301, Interested Party.

Date: 10/13/06

Anne M. Stelmach, Clerk