

Karen and Emile Haddad v. Town of Bedford
Docket Nos.: 24688-08PT/25178-09PT

Laurie Teale Revoc. Trust v. Town of Bedford
Docket Nos.: 24689-08PT/25180-09PT

2-3-4 Cote Lane, LLC v. Town of Bedford
Docket Nos.: 24690-08PT/25182-09PT

DECISION

The above captioned appeals were consolidated for hearing on March 16, 2011. The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 and 2009 assessments on office condominiums (the “Properties”) as follows:

TAXPAYER	MAP/LOT	2008 ASSESSMENT	2009 ASSESSMENT	NON- APPEALED PROPERTY
HADDAD #24688-08PT/ #25178-09PT	10/Lot 2-5 “Unit #5”	\$262,900	\$262,900	31/Lot 50-2
TEALE REV. TR. #24689-08PT/ #25180-09PT	10/Lot 2-1 “Unit #1”	\$257,300	\$257,300	40/Lot 19-38
2-3-4 Cote Lane LLC #24690-08PT/ #25182-09PT	20/Lot 2-2 20-Lot 2-3 10/Lot 2-4 “Unit #2” “Unit #3” “Unit #4”	\$240,100 \$240,100 \$254,600	\$240,100 \$240,100 \$254,600	NONE

For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessments were excessive because:

- (1) an appraisal performed by Stephen Bullock of Stephen Bullock & Associates ("Bullock Appraisal") estimated, largely by the sales comparison approach, the market values of the Properties were: 2008 --- Unit #1 - \$166,000; Unit #2 - \$160,000; Unit #3 - \$153,000; Unit #4 - \$154,000; and Unit #5 - \$166,000; 2009 --- Unit #1 - \$150,000; Unit #2 - \$145,000; Unit #3 - \$138,000; Unit #4 - \$140,000; and Unit #5 - \$150,000 (see Taxpayer Exhibit No. 1);
- (2) the Properties are not homogenous to the neighborhood; they are located in a commercial office zone but are surrounded by industrial properties on two to three sides and high tension electric wires on the other as shown in Taxpayer Exhibit No. 3;
- (3) the five condominium units are narrow and deep with poor natural lighting and the interior build-out contains separately demised office areas;
- (4) the Properties are of average to low quality construction when compared to other more desirable office condominiums in the Town;
- (5) the Town's comparable sales are located in areas with up to five times the traffic count and thus the location adjustments are insufficient as depicted in Taxpayer Exhibit No. 5;

- (6) there is an inverse relationship when adjusted between the size of the Town's comparables and their superior locations; and
- (7) the assessments should be abated to the values determined in the Bullock Appraisal.

The Town argued the assessments were proper because:

- (1) the Properties are assessed at the lower end of the range of values of office condominium sales that occurred between April 1, 2006 and April 1, 2008 (see Municipality Exhibit A at Tab B);
- (2) the Properties are well located in a neighborhood convenient to major east/west travel and north and south highway access and benefit from a lack of competition for leased space for the type of specialized tenants in the units which do not rely on impulse customer traffic;
- (3) a matched paired sales analysis supports a time adjustment of -9% per year and a unit size adjustment of \$42.00 per square foot (see Municipality Exhibit A at Tab F); and
- (4) three comparable sales, when adjusted for time and unit size among other features, support the assessments of the Properties.

The parties stipulated that the 2008 and 2009 levels of assessment were 97% and 101.1% respectively based on the 2008 and 2009 median ratios as determined by the department of revenue administration. The parties also stipulated that the non-appealed residential properties owned by "Haddad" and "Teale" were reasonably assessed and need not be considered further by the board. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

On March 23, 2011, the board took an exterior view of the Properties and all of the comparables utilized by the parties in both the Bullock Appraisal (Taxpayer Exhibit No. 1) and Municipality Exhibit A.

Board’s Rulings

Based on the evidence, the board finds the proper assessments are as follows:

TAXPAYER	MAP/LOT	2008 ASSESSMENT	2009 ASSESSMENT
HADDAD #24688-08PT/ #25178-09PT	10/Lot 2-5 “Unit #5”	\$232,300	\$232,300
TEALE REV. TR. #24689-08PT/ #25180-09PT	10/Lot 2-1 “Unit #1”	\$227,400	\$227,400
2-3-4 Cote Lane LLC #24690-08PT/ #25182-09PT	20/Lot 2-2 20-Lot 2-3 10/Lot 2-4 “Unit #2” “Unit #3” “Unit #4”	\$212,200 \$212,200 \$225,000	\$212,200 \$212,200 \$225,000

These assessments are the result of the board concluding a 10% adjustment largely for the Properties units’ location should be applied to the combined condominium site/replacement cost calculation on their respective assessment-record cards.

The board was unable to rely upon the value conclusions of the Bullock Appraisal for many of the reasons testified to by the Town, including the choice of comparables utilized in the Bullock Appraisal and the adjustments applied to them. The Bullock Appraisal’s market value conclusions, on a per square foot basis, appear low compared to the array of office condominium sales contained in Municipality Exhibit A (Tab B), even if any possible differences in the Properties’ style, size and quality are accounted for. On its view, the board did note a market recognition of quality (a number of the comparables were rated as “above average” quality compared to the “average”

quality of the Properties), but could not find any discernable recognition for style (“colonial” versus “contemporary”) and size of the units.

However, the board did find on its view that the Properties are in an inferior location generally from the comparable sales presented by both parties. While the board did observe the industrial/warehousing development in the Properties immediate neighborhood, we do not find the development to be a significant economic distraction as the industrial/warehousing uses appear to be relatively light in nature with the exception of the trucking depot to the rear. Rather, the board did note that the Properties’ location has significantly less traffic than the commercially developed areas of South River Road (Route 3) and Route 101 where the vast majority of the office condominium comparables are located. The higher traffic volume of those areas and the adjoining secondary streets that contain many of the office condominiums are the result of the significantly greater commercial development adjoining Route 3 and Route 101 which produces a synergistic draw and attributes a higher value to those locations. Despite a careful review by the board of the various assessment base rates and coding notations on the assessment-record cards, the board was unable to discern how, if at all, the Town adjusted for those locational differences.¹ In addition to the board’s view, the testimony of two of the Taxpayers supports the board’s conclusion that the location was inferior to most of the comparables. Many, although not all, of the occupants of the

¹ The board had difficulty trying to decipher the Town’s assessment methodology and base rates for the office condominium assessments. The board reviewed not only the assessment-record cards of the Properties but all of the comparables that were submitted in the various exhibits and could not discern any normal size/value curve that differing square foot properties usually exhibit. The adjusted base rates for the office condominiums (which the board assumes is a combination of the site/locational attributes and the quality of the improvements) appear to vary without any discernable reason and without any notation on the assessment-record cards. As an example, on the assessment-record cards contained in Municipality Exhibit A (Tab B), the assessment of the three sales at 360 Route 101 utilized adjusted base rates that are contrary to the usual inverse relationship between size and price per square foot. Unit #8, a two story office condominium of 3,848 square feet has an adjusted base rate of \$134.56, higher than the adjusted base rates (\$115.06 and \$118.54 respectively) for the smaller first floor units, Unit #14AB (2,376 square feet) and Unit #1 (2,112 square feet). Further, the Town did not provide the reassessment’s market analysis/the assessment manual that presumably would contain the analysis/discussion and correlation of base rates utilized for office condominiums for the board to review the market derivation of the Town’s methodology.

Properties' units entail uses that do not attract a high level of retail/public traffic or are "destination-type" uses.

Because few of the comparable sales were identical in size, style and quality to the Properties, it is difficult with much reliability to extract through paired sales analysis the difference in value that could be attributable to location/access/traffic. However, the board finds, based on its experience, that locational economic forces would place a greater value on commercial office condominiums that are located in higher trafficked neighborhoods. Since the Town's assessment models were derived from the sales of units in higher trafficked neighborhoods, the board has applied the 10% adjustment for Properties' location.

The board considered but chose not to make annualized adjustments for the roof and paving repairs done in 2008 and the landscaping completed in 2009. As testified to by the Town's assessor, Mr. Bill Ingalls, overall the Properties were in average condition in both years notwithstanding the approximate \$95,000 infusion of capital for these short lived capital items that are routinely repaired every twenty to thirty years. Consequently, the board has not made any specific adjustments between the two years for the maintenance that occurred.

In brief, while the board was unable to utilize either the Taxpayers' appraisal or the Town's submissions in a definitive analytical manner, the board concludes, after reviewing the Properties and all the comparables and utilizing its judgment and experience (see RSA 71-B:1; see also RSA 541-A:33, VI), that the 10% adjustment results in assessed values that are more proportional to the unique factors of the Properties discussed above. (Paras v. City of Portsmouth, 115 N.H. 63 (1975) (All factors affecting market value must be considered when assessing property.))

If the taxes have been paid, the amount paid on the value in excess of those listed above 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 the ordered assessments for subsequent years.

RSA 76:17-c, I and II.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayers; Chairman, Bedford Town Council, 24 North Amherst Road, Bedford, NH 03110; and Vision Appraisal Technology, Attn: Mike Tarello, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: April 19, 2011

Anne M. Stelmach, Clerk