Jerome C. Artigliere Revocable Trust

v.

Town of Kensington

Docket No. 25681-10PT

ORDER

The board has reviewed the "Town's" September 7, 2012 "Motion for Clarification" ("Motion") with respect to the board's August 15, 2012 "Decision." The Motion was filed by Avitar Associates of New England, Inc. ("Avitar"), the Town's contract assessor and representative at the hearing. The suspension Order entered on September 12, 2012 is hereby dissolved. To the extent the Motion claims error in the Decision, the board does not agree.

Following the hearing on the merits, the board deliberated and found the "Taxpayer" did not meet its burden of proving the assessment, as abated, resulted in disproportionality[1]. Ordinarily, the prevailing party, such as the Town in this appeal, has no discernible reason to seek a "clarification" regarding the board's findings on the evidence presented. (See RSA 541:3 and Tax 201.37.) Nonetheless, the board will respond briefly to the Motion.

The Motion makes two claims regarding the Decision. The first claim discusses the board's finding, based on the evidence presented, that Avitar's sales analysis (Municipality Exhibit B) was entitled to "no weight" and was "circular in nature." The second claim refers to

[1] The abatement granted by the Town prior to the hearing reduced the assessment substantially (from $476,800 to $407,900).

the board's questioning of the basis of adjustments made in Avitar's analysis rather than accepting those adjustments at face value.

As to the first claim, stating the board could place "no weight" on Avitar's sales analysis is commonly understood to mean the board did not find the analysis, including the related testimony at the hearing, to be probative on the central issue of whether the Property was disproportionally assessed. (See also Taxpayer Exhibit No. 2.) It is well established the trier of fact has discretion regarding how much weight, if any, should be given to each piece of evidence.[2] Avitar's sales analysis, and the testimony regarding it, simply did not persuade the board that it was entitled to material weight in the board's decision-making.

The process of mass appraisal, utilized to assess property on a Town-wide basis, is distinct from a subsequent analysis or appraisal presented to support or challenge the proportionality of the assessment on a specific property. While assessments carry a "presumption" of validity (which is precisely why the burden of proof in a tax abatement appeal rests with the Taxpayer and not the Town), any analysis or appraisal prepared in defense of the proportionality of the assessment on a specific property can only be given the weight it deserves. In other words, the board has the obligation to consider and weigh, for itself and without any a priori presumption of validity, any analysis or appraisal presented by either party because the

[2] As stated in many prior board decisions, in making market value findings the board considers and weighs all of the evidence, applying the board's "experience, technical competence and specialized knowledge" to this evidence. See RSA 71-B:1; and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). The board has the discretion to evaluate and determine whether any piece of evidence is indicative of market value. Cf., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). See also Decision (p. 6): "This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment, considering all relevant factors affecting value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993)."

board has a duty to evaluate the probative value of any such market value evidence whether submitted on behalf of the Taxpayer or the Town. (See Decision, pp. 4-6.)

The board does not agree the Decision "appears contrary to law" (Motion, pp. 1 and 2) in considering and determining what weight could be placed on this evidence. The only authority cited by Avitar in support of its assertions, Porter v. Town of Sanbornton, 150 N.H. 363 (2003), addresses assessment methodology and how and when a municipality's "flawed methodology" can be challenged by a taxpayer in an abatement appeal; Porter is silent on whether a sales analysis presented to defend an assessment should be entitled to deference when compared to other evidence, such as an market value appraisal prepared by an independent appraiser bound by professional standards. A sales analysis can be questioned when it is not based on comparable sales properly adjusted for physical and market differences.

As to the second claim, Avitar's representative was questioned during the hearing regarding the adjustments in Avitar's analysis of five sales in Municipality Exhibit B. One key issue presented by the Taxpayer was the $84,800 assessed value attributed to the five-car garage with partially finished living space on the Property. Avitar's analysis simply took the sale prices of five comparables and then applied adjustments based on values calculated by Avitar's CAMA (computer assisted mass appraisal) system for each physical difference (such as number of garages, barn, etc.) based on the cost approach.

The Motion (p. 2) concedes Avitar should have "equalized" the numbers used in its analysis to present a market value ("Adjusted Sale Price") estimate, instead of simply applying assessed value adjustments to the sale prices. In addition, the analysis did not establish how, if at all, the adjustments applied (even if equalized) were reasonably derived from any market-based evidence. Therefore, the board found the analysis was not probative of the market value of the

Property, but simply tended to show the Property was assessed in a manner consistent with other properties in the Town.

For these reasons, the board does not agree with the claims asserted in the Motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

CERTIFICATION

I hereby certify that a copy of the foregoing Order has this date been mailed, postage prepaid, to: Jerome C. Artigliere, 48 Stumpfield Road, Kensington, NH 03833, Taxpayer's Representative; Chairman, Board of Selectmen, Town of Kensington, 95 Amesbury Road, Kensington, NH 03833; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: November 21, 2012

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Anne M. Stelmach, Clerk