

**Town of Milford**

**Docket No.: 17330-97RA**

**ORDER**

Based on its authority under RSA 71-B:17 and the findings contained in an order dated March 13, 2003 (“Order”), the board found the reassessment previously ordered for tax year 2000 had “not been satisfactorily performed.” As required by Tax 208.06(4), the board held a hearing on April 15, 2003 to receive testimony from the “Town,” representatives of Cole-Layer, Trumble, Inc. (“CLT”) (having just prior to the hearing filed for and been granted intervenor status pursuant to RSA 541-A:32) and the public as to whether the board, pursuant to RSA 71-B:17, should certify the reassessment to the department of revenue administration (“DRA”) or order some alternative action. Present at the hearing were the following individuals: William R. Drescher, Esq., Cynthia Dokmo, Esq. and Michael Lambert, Esq., co-counsels for the Town; Nancy Amato, Cynthia Herman and Noreen O’Connell, Town selectwomen; Katherine Chambers, Town administrator; Gregory Heyn, Town assessor; Roy Tilsley Jr., Esq., counsel for CLT; Robert J. Finnegan and Robert Marshall, senior vice president and assistant vice president, respectively, for CLT; Mark Bennett, Esq., counsel for the DRA; Robert Boley, director of community services, DRA; and Guy Petell, manager, bureau of assessments, DRA.

**Presented Arguments**

The Town stated it agreed with the board's findings in the Order that the 2000 reassessment had not been satisfactorily performed and, consequently, it was not contesting the board's findings (See Municipality Exhibit A). The Town argued, however, that it was not necessary for the board to certify the reassessment to the DRA. As an alternative, the Town informed the board it has begun a remedial plan of action and argued it should be allowed to continue with its plans of: 1) measuring and listing one-quarter of the properties in the Town each year for the next four years; 2) appropriating funds at the 2004 town meeting to acquire new assessing software and support services; and 3) performing a market analysis to complete a full reassessment for tax year 2006 (the Town's RSA 21-J:11-a certification year). The Town argued such an approach had the support of the DRA and would be less costly and be as timely and effective a remedy as certifying the reassessment to the DRA. The Town stated that certifying the reassessment to the DRA would also result in a duplication of effort, inasmuch as the Town has on its own already measured and listed 25% of the properties in the Town. The Town further stated it did not believe either CLT's current computer-assisted mass appraisal ("CAMA") system or the current assessment models and values could be rehabilitated due to the shortcomings found by the board and additionally, due to the differences between the Town and CLT, as highlighted by a breach of contract suit filed by the Town in Hillsborough County Superior Court.

CLT, for its part, disagreed with the Town regarding the need for another reassessment. At the hearing, CLT offered to submit several additional documents (pertaining to the review appraiser's report and analysis) and a memorandum of law in support of its position that no reassessment certification to the DRA was necessary and

that the board lacked authority to make an order to that effect. The Town objected to the submission of these exhibits by CLT. After hearing arguments on whether the documents and memorandum should be admitted, the board sustained the Town's objections and declined to accept them. CLT noted its exceptions to these rulings.

While giving CLT an opportunity to argue its position at the hearing, the board found the documentary exhibits, if accepted, would serve no valid purpose at this late stage of the proceedings. The board accepted the review appraiser's report as one piece of evidence submitted for the board's consideration before issuance of the Order.

Neither the Town nor CLT filed any timely objection or motion for rehearing or reconsideration of the Order. To permit CLT to question the report's approach or conclusions at this time would reopen what the board regards as resolved questions and burden the proceedings with further unnecessary delays, including, at a minimum, further opportunity for the Town to respond to CLT's submissions. Moreover, any proposed memorandum questioning the board's authority to certify the reassessment to the DRA is either premature, since the board had not yet exercised such authority, or moot, should the board decide not to do so.

### **Board's Findings and Rulings**

Based on the testimony and evidence received at the hearing and the long record established in this docket, the board notes the Town's understanding and acceptance of the need for a reassessment. The board has reviewed the reasons given by the Town as to how it wishes to proceed in "good faith" to undertake a reassessment, but without the necessity of certification to the DRA, and why tax year 2006 is more appropriate than 2005. The board finds these reasons, largely pertaining to cost and efficiency issues, to be persuasive. The board, therefore, concludes the best remedy at this time, as suggested

by the Town, is to order the Town to proceed with a four-year measure-and-listing plan culminating with a full market valuation for tax year 2006. The board will detail its reasons for this conclusion and its expectations for the Town in the following paragraphs.

The board finds certifying the reassessment to the DRA, as provided in RSA 71-B:17, is discretionary based on the circumstances in each case. The statute provides that the board “may” certify the reassessment to the DRA, however, it does not require that it must, upon a finding of an unsatisfactory reassessment. The board deems that the certifying of a reassessment to the DRA is an extreme measure to be employed only when a town has failed to acknowledge its responsibility to perform appropriate assessment remedies to improve the overall assessment equity within a municipality.

Certifying the reassessment to the DRA essentially removes the local assessing officials from their responsibility and requires the DRA to proceed with all the assessing and oversight functions of a reassessment, including identifying an assessing contractor and selecting associated CAMA systems. We do not believe the facts in this case warrant such an order. Here the Town has acknowledged the need for a reassessment and agrees with the board’s finding that the 2000 reassessment has several significant shortcomings which have not been adequately addressed after an extended period of time was provided to the Town and CLT to improve the assessment documentation and its ease of comprehension. The Town has taken a proactive step in initiating a four-year measure-and-list process towards a full-value reassessment in 2006. Also, it is clear, based on the testimony of Guy Petell, that certifying the reassessment to the DRA would not necessarily cause it to occur in a more timely fashion nor would there necessarily be any guarantee of better quality.

In short, the board finds the process presented by the Town to be an efficient and

logical means of achieving the acknowledged goal of providing assessment equity through a process that is well documented, “user friendly,” and has the ability to be reviewed and updated for subsequent tax years. Consequently, the board finds no advantage to certifying the reassessment to the DRA and, as detailed later in this order, the board will lay out the steps the Town should follow toward a full reassessment in 2006.

CLT argued it was not too late to further improve the existing assessment documentation, analyses and performance by utilizing the board’s tax review appraisers in that process. We disagree. More than adequate opportunity has been provided for the Town and CLT to address and improve the shortcomings found in the reassessment (as outlined in great detail in the board’s July 5, 2002 order and further in the Order). After an extensive hearing on June 5, 2002, the board kept the record open for approximately one-and-one-half months to receive further documents from the Town and CLT to address the reassessment’s shortcomings at that point. The board instructed its review appraisers to review those subsequent documents and file a supplement to their final report as to whether those documents addressed the concerns the board had found in its July 5, 2002 order. Further, as the file entry log indicates, the board’s tax review appraisers, in an attempt to provide a full opportunity for the Town and CLT to rehabilitate the reassessment, received additional documents and correspondence after the deadline date.

Despite the opportunities provided to the Town and CLT, the board found in the Order that many of the reassessment’s shortcomings outlined in the July 5, 2002 order were still unresolved. While the board had earlier found the reassessment statistics showed a generally acceptable assessment level and equity amongst assessments, there

remained still unresolved concerns in the quality of the commercial/industrial assessments and in the documentation of the reassessment and, consequently, the ability for the Town and taxpayers to understand and utilize the value computations. The board's review appraisers' reports and source documents support the board's conclusion that the problems with CLT's CAMA system and the lack of adequate and understandable market analysis hobble the Town in its ability to maintain the assessment equity in the future (See RSA 71-B:16-a, IV).

Further, CLT's suggestion would further involve the board's tax review appraisers in an ongoing, and probably futile, attempt to rehabilitate the 2000 reassessment, even though the Town is unwilling to do so and has severed its connection with CLT. We believe this would be inappropriate, based on the law empowering the Town with the primary assessing responsibility (RSA chapters 74 and 75), and the focus of the board's tax review appraisers' roles addressed in RSA 71-B:14 and TAX 208.

To progress towards a complete reassessment for tax year 2006, the board orders the Town to perform the following steps and procedures.

1) The Town shall continue the process it has initiated of reviewing the physical data of 25% of the properties in the Town during the next three years and shall utilize any physical data corrections in revising current assessments and to create the cumulative physical database for the 2006 reassessment.

2) The Town shall place appropriate article(s) on its 2004 annual town meeting warrant to raise and appropriate adequate funds to acquire a new CAMA system, adequate training and support for such system and contracted appraisal services to perform a full-value reassessment for tax year 2006. Such system shall provide for property assessment-record cards that accurately describe each property's valuation

components and show land and building valuation calculations including the application of various depreciation factors and adjustments, with supporting notes. Such system shall be able to perform and produce understandable market analyses necessary to create the various appraisal models used in the mass appraisal process, both for the 2006 reassessment and for any updates in subsequent tax years.

3) As provided in RSA 21-J:11, I, before the Town enters into a contract for the reassessment, it shall first be submitted to the DRA for review and approval.

4) The reassessment procedures, including the provisions contained in any contract entered into by the Town for the reassessment, must be compliant with all applicable statutes and rules, including the DRA's 600 rules.

5) To facilitate the DRA's RSA 21-J:11 monitoring responsibility, the Town shall provide the DRA appropriate access to assessing documents during the reassessment.

6) The Town shall provide periodic progress reports to the board, as required in TAX 208.06 (a) (1), starting April 1, 2004, and every six months thereafter until October 1, 2005, at which time the Town shall file the progress reports every three months until April 1, 2007.

7) The board's tax review appraisers shall review such progress reports and investigate, to any extent necessary, the progress and quality of the reassessment as it proceeds.

Finally, because the board has not removed its 2000 reassessment order, the current docket will continue to be utilized for the ordered 2006 reassessment. Also, Member LeBrun has listened to the tape of the April 15, 2003 hearing and joins the sitting members in this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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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 that copies of the within Order have this date been mailed, postage prepaid, to William R. Drescher, Esq., Drescher & Dokmo, P.A., P.O. Box 7483, Milford, N.H., 03055, counsel for the Town; Michael Lambert, Esq., Sheehan, Phinney, Bass and Green, P.A., 1000 Elm St., P.O. Box 3701, Manchester, N.H., 03105-3701; Chairman, Board of Selectmen, Town of Milford, 1 Union Sq., Milford, N.H., 03055; Roy W. Tilsley Jr., Esq., William H. Kelley, P.A., P.O. Box 3280, Manchester, N.H., 03105, counsel for Cole-Layer-Trumble; and Guy Petell, Manager, Bureau of Assessments, Department of Revenue Administration, 57 Regional Drive, Concord, N.H., 03301.

Date: May 16, 2003

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Anne M. Bourque, Deputy Clerk