

Town of Milford

Docket No.: 17330-97RA

ORDER

This order relates to whether the “Town” has satisfactorily complied with the board’s February 25, 1998 Order for Reassessment (“Reassessment Order”) with respect to tax year 2000. For the reasons that follow, the board finds the reassessment has not been satisfactorily performed.

RSA 71-B:17 provides the procedure for carrying out a board-ordered reassessment and states:

“If the appraisal or reappraisal is satisfactory to the board the order shall be removed. If the assessment or reassessment is not made in conformity with the order . . . or if it is not satisfactory to the board, the board may certify the order to the commissioner of revenue administration who shall cause the reappraisal to be made by his department or by professional appraisers employed for the purpose.”

Since the Town’s implementation of the reassessment in 2000, there has been a long and tortuous course followed in providing the Town and its contractor, Cole-Layer Trumble Company (“CLT”) with multiple opportunities to remedy the reassessment’s shortcomings so that it is satisfactory to the board. There have been a number of board orders, two hearings and several tax review appraiser reports addressing serious concerns regarding the reassessment.

Many of the concerns and findings of the earlier orders, in particular the July 5, 2002 order (“Prior Order”), continue to apply despite the Town and CLT’s subsequent efforts.

Consequently, the board incorporates here by reference the findings in the Prior Order.

The Prior Order left the record open for further submissions by the Town and CLT to attempt to rectify various concerns stated therein and in the tax review appraiser’s March 12, 2002 Final Report (“Final Report”). The board instructed its tax review appraisers to review those submissions and file a supplement to the Final Report (“Supplement”), which they did on January 17, 2003. The board has reviewed the Supplement, in conjunction with the documents submitted by the Town and CLT. We agree with the findings of the Supplement and find a number of the areas identified in the Prior Order are still not satisfactorily corrected as outlined in the following paragraphs.

The commercial and industrial valuation analysis and application is inadequate to comply with the standards required by the department of revenue administration’s (“DRA”) 600 rules, the contract between the Town and CLT (“Contract”), and generally-accepted assessing standards as referenced in the Prior Order. Because commercial and industrial properties do not sell with the frequency of other types of properties, the irregularities and inequities of their assessments are sometimes difficult to analyze by traditional assessment-to-sale ratios.

Nonetheless, the few commercial and industrial sales that did occur and were analyzed in the Final Report indicate unsatisfactory assessment equity. Further, the analysis of commercial and industrial land valuation calculations and income approach models and their inconsistent application addressed in the Final Report and the Supplement also highlight the problems with

the assessment methodology of the commercial and industrial properties. This might be of less concern if such strata comprised a small percentage of the Town's taxable property. However, based on the Town's 2002 Summary Inventory of Valuation filed with the DRA, the commercial and industrial land and building valuation comprises approximately 30% of the Town's tax base.

While additional documentation was supplied subsequent to the Prior Order, the sales survey and appraisal manual are still not in compliance nor are they understandable to a degree sufficient to assist taxpayers who seek information regarding the valuation computation.

Manufactured-home value data was revised. This has improved the level of assessment but has also increased the coefficient of dispersion. The board recognizes this strata of property is often difficult to value and achieve good assessment equity; nonetheless, the board finds the manufactured-housing assessments are still not satisfactory according to general assessing standards and the five criteria outlined in RSA 71-B:16-a.

While CLT and the Town made improvements to the assessment-record cards for both the commercial and residential properties, the board finds the continued use of the CDU factor as described in the Prior Order has not been adequately addressed. Continued use of this CDU is not only contrary to the DRA 600 rules, the Contract and generally-accepted industry standards but makes it difficult for taxpayers to understand how this factor was applied consistently to their own and other properties. See Prior Order at 12-15.

The board does find, as noted in its Prior Order at 7, and in the Final Report at 31, the reassessment generally attained market value and the coefficients of dispersion were generally

acceptable (with the exception of the manufactured homes and the commercial and industrial properties). Nonetheless, as the board also noted in the Prior Order, this is but one component in performing a satisfactory reassessment. The second component is having the proper documented appraisal manual, sales survey and assessment-record cards to provide the basis for anyone to understand how the assessments were determined and calculated. As the board stated in the Prior Order, if this second component is not performed satisfactorily, the technical valuation component cannot be presented and explained to the assessing officials or the public in a meaningful manner. In addition to the commercial and industrial and manufactured-home strata, the board finds the Town and CLT have failed to perform this second important component in a satisfactory fashion for the reasons stated in the Prior Order, the Final Report and the Supplement.

As noted in the summary on page 15 of the Prior Order: “. . . it is not the board’s intent to set unrealistic requirements for finalizing the reassessment to its satisfaction.” However, as also noted on page 11 of the Prior Order, the appraisal manual, sales survey and assessment-record cards, prepared in compliance with DRA 600 rules as embodied in the Contract and in keeping with accepted assessing standards, are part of the “. . . ‘appropriate enforcement measures’ that were enunciated in Sirrell v. State of New Hampshire, 146 N.H. 364 (2001)” For the board to remove its order and to find the reassessment to be satisfactory, would require it to ignore the Reassessment Order which incorporated the DRA’s 600 rules as standards and noted the general findings in Sirrell, supra at 380, that while there “. . . was insufficient [evidence] to show a systematic pattern of disproportionate taxation . . . ,” and thus unconstitutionality, assessing

methodology and standards must be consistently adhered to. Here, we find they have not been.

For all these reasons, the board finds the reassessment has not been performed to its satisfaction. Consequently, the Town is ordered to show cause why the board should not certify the reappraisal to the DRA, pursuant to RSA 71-B:17, for a new reappraisal to be done effective no later than tax year 2005. A hearing on this show cause order shall be held on April 15, 2003 at 9:00 a.m. at the offices of the board located at Johnson Hall, 107 Pleasant Street, Concord, New Hampshire. At the hearing, the Town and any taxpayers may present testimony on alternatives to certifying the assessment to the DRA. The Town is ordered to post copies of this order in two public places in the Town no later than ten days prior to the hearing date.

The board has chosen to schedule this show cause hearing after considering the multiple unsatisfactory responses to the opportunities provided to the Town and CLT to remedy the shortcomings of the reassessment as noted in the Prior Order, the Final Report and the Supplement. The board does not pursue this course lightly given the effect such certification would have in removing the reassessment functions from the local assessing officials. However, based on the quality of the reassessment activity over the past several years in the Town, the board is very concerned whether a reassessment can be adequately carried out by the Town in compliance with the applicable statutes and rules without certification to the DRA. Thus, this show cause hearing is being provided to hear what alternatives the Town might suggest in lieu of certification to the DRA.¹

¹ RSA 71-B:17 provides discretion to the board relative to certifying reappraisals to the

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 that copies of the within Order have this date been mailed, postage prepaid, to William R. Drescher, Esq., Drescher & Dokmo, P.A., Post Office Box 7483, Milford, New Hampshire, 03055, counsel for the Town; Chairman, Board of Selectmen, Town of Milford,

DRA by using the word “may” in the statute. In an earlier case, City of Berlin, Docket No.: 90142-90RA (September 9, 1995), the board declined to certify the reassessment to DRA. As noted in that case, “[t]he board views certification to DRA as a step necessary only when a municipality is reluctant to perform its assessing duties properly.”

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Milford Reassessment

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1 Union Square, Milford, New Hampshire, 03055; Roy W. Tilsley, Esq., William H. Kelley, P.A., Post Office Box 3280, Manchester, New Hampshire, 03105, counsel for Cole-Layer-Trumble; Paul M. Flynn, Cole-Layer-Trumble Company, 12 Goose Lane, Tolland, Connecticut, 06084; and Guy Petell, Director of Property Appraisal, Community Services Division, Department of Revenue Administration, 57 Regional Drive, Concord, New Hampshire, 03301.

Date: March 13, 2003

Anne M. Bourque, Deputy Clerk