

**Town of Milford**

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

**ORDER**

This order addresses whether the reassessment ordered by the board to be performed by the “Town” for tax year 2000 satisfies the requirements of RSA 71-B:17. Under this statute, the completed reassessment must be “satisfactory to the board” and must be “made in conformity with the order” of the board.

For reasons discussed below, the board finds the Town’s tax year 2000 reassessment is not yet satisfactory and is still not in conformity with the board’s February 25, 1998 Order (“Order”). Certain problem areas pertaining to the reassessment have been identified by the board’s tax review appraisers and have generally been acknowledged by the Town as deficiencies in the work performed on its behalf by a third party appraisal company which need correction. Consequently, rather than exercising its discretionary authority under RSA 71-B:17 to certify the Order to the commissioner of the department of revenue administration (“DRA”) at this time, the board will detail those areas that require remedial action and establish a time frame for the Town to carry out those actions, as well as a process for a review of the results.

Reassessment Order Chronology

A short, non-exhaustive chronology of the major “significant events” that occurred in this file is helpful in putting this order in perspective.

- Prompted by questionable overall assessment equity that arose from an individual property tax appeal and, after a show cause hearing was held, the board, on February 25, 1998, ordered the Town to perform a reassessment for tax year 2000 and ordered the “reassessment must comply with applicable statutes and rules and with chapter REV PART 600 from the DRA’s rules on revaluation.” (Order at 4).
- After final appropriation of funds for the reassessment at the March 1999 town meeting, the Town entered into a contract on March 31, 1999 (subsequently amended in May 2000) (“Contract”) with Cole-Layer-Trumble Co. (“CLT”) to carry out the ordered reassessment.
- Following the receipt of information from the Town in the first quarter of 2001, and the filing on March 21, 2001 of a preliminary report (Preliminary Report”) by the board’s senior tax review appraiser, Mr. Stephan Hamilton, the board held a hearing on April 19, 2001 to “make a preliminary determination as to whether the [board-ordered] reassessment was done to the board’s satisfaction and, if not, to explore what remedial actions might be appropriate.”
- A follow-up order of April 26, 2001 noted that some progress had been made between the Town and CLT in resolving the issues discussed at the April 19, 2001 hearing and the board would reserve final judgement as to whether the reassessment was done to its

satisfaction until the board's tax review appraisers had filed their final report ("Final Report") in accordance with TAX 208.06 (a)(2).

- On March 12, 2002, the board's tax review appraisers filed their Final Report on the reassessment's compliance with the board's Order.
- A hearing was held on June 5, 2002, to "ascertain the Town's plans to address the concerns raised in the [final] report."

#### General Comments

In addition to detailing the remaining issues to be resolved by the Town, the board believes some general comments will be helpful in understanding its specific findings.

RSA 71-B:17 provides that the reassessment be done "satisfactory to the board"; however, no specific standards are detailed in the statutes as to what is deemed to be "satisfactory." In the board's review of the Town's compliance with the Order, and indeed in all ordered reassessments, the board looks to several sources to consider whether a reassessment has been performed satisfactorily.

First, RSA 71-B:16-a provides the criteria to be considered by the board before ordering a reassessment. Certainly if such criteria are appropriate in the determination of the need for a reassessment, they are also appropriate criteria to determine whether such reassessment has been performed satisfactorily. Consequently, the board looks to the RSA 71-B:16-a criteria in evaluating a reassessment's performance.

Second, TAX 208.06 outlines the procedure for the municipality to periodically file progress reports and for the board's tax review appraisers to perform subsequent assessment-to-

sale ratio studies to determine whether a “statistically acceptable reassessment was performed.”

Thus, the board considers all evidence received during the periodic updates and the analyses and standards referenced in the Final Report.

Third, the board routinely includes in its reassessment orders, as it did in this Order, that the reassessment must be done in compliance with all applicable statutes and rules, including the DRA’s 600 rules. Thus, our review considers whether the Town has complied with the Order (see TAX 208.06(a)(3)) by materially complying with the DRA’s 600 rules.

Fourth, to the extent a municipality enters into a contract with a private reappraisal firm to perform a reassessment and the contract incorporates many of the provisions of the DRA’s 600 rules, as the Contract did in this case, the board also looks to the contract to determine whether the significant provisions have been materially satisfied. The board does so at the same time recognize it is not the enforcer or arbiter of disputes that arise from such contracts.

Fifth, while not officially adopted by the board, generally accepted publications and standards relating to mass appraisal practices should be considered, including, but not limited to: Appraisal Standards Board, Uniform Standards of Professional Appraisal Practice, Standards Rule 6 (2000 ed.); Robert J. Gloudemans, Mass Appraisal of Real Property, (International Association of Assessing Officers (IAAO), 1999); and Appraisal Institute, The Appraisal of Real

Estate, (11<sup>th</sup> ed.).<sup>1</sup>

Next, as stated from the bench during the June 5, 2002 hearing, any reassessment must fulfill two general functions: one, be technically accurate and complete; and two, be understandable, not just by the appraisal company (CLT), but by the Town and its taxpayers. The technical components of a reassessment must have the capacity for the local assessing officials to understand how the assessments were derived from the market and the capability of being modified, individually or systematically, for future improvements or market changes. Today such technical components are commonly computer-assisted mass appraisal (“CAMA”) systems with the attendant software and hardware to integrate with other municipal billing and financial functions. The second component of a reassessment, one to enable the general public to understand their assessments and derivation, is embodied in the appraisal manual, sales survey and assessment-record cards required by the DRA’s 600 rules. That component should not only document the market data and models utilized in the CAMA system but should also be in a plain, understandable format for anyone who does not have access to the CAMA system, specifically taxpayers, so they may understand their assessments and, if necessary, challenge them in a meaningful fashion.

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<sup>1</sup> See RSA 71-B:5 I and Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (The board “may institute its own investigation” and may utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”)

As the following sections will detail, the board finds, in this case, the Town received from CLT the first technical component in a reasonable fashion,<sup>2</sup> but many of the features of the second reassessment component, the appraisal manual, sales survey and the assessment-record cards, are seriously lacking. The board has a very serious concern that many of the issues raised relative to the lack of an adequate appraisal manual, sales survey and pricing detail on assessment-record cards were not responded to by CLT in a sufficient manner so that the product provided to the Town is compliant with the DRA's 600 rules and the Contract. At the June 5, 2002 hearing, a CLT representative indicated that additions have been made to the appraisal manual which were subsequent to the appraisal manual provided to Mr. Hamilton prior to his Final Report. However, those amendments were not submitted to the board and, to date, the board has no documentation as to whether those amendments comply with the provisions of the DRA's 600 rules. Inclusion of the DRA's 600 rules' provisions in the Contract and the clear lack of compliance with those provisions by CLT causes the board to conclude that CLT felt it was under no compunction to comply with the rules despite the Contract requirements and the board's Order to this effect. The board also notes that at the June 5, 2002 hearing, representatives of the DRA noted the product delivered to the Town does not comply with the DRA's 600 rules; however, they also indicated the DRA believes it does not have the authority

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<sup>2</sup> The board does note earlier computer problems CLT was experiencing in the Town. However, apparently those have been satisfactorily resolved or are in the process of being resolved as the Town did not raise those as outstanding issues at the June 5, 2002 hearing.

to enforce its rules. Without commenting further on the propriety of that conclusion,<sup>3</sup> this board will not close the file on this reassessment order until the product submitted to the Town materially satisfies the provisions of the DRA's 600 rules. Those rules are not simply bureaucratic verbiage to be recited and not complied with; rather, they are general reassessment provisions that are based on industry standards and are intended to provide the Town with a product that is documented, useful by Town officials and taxpayers alike, and provide continuing utility and adaptability of the reassessment in future years. Regardless of whether a town receives a CAMA system or a manual reappraisal system, the documentation included in the appraisal manual, sales survey and properly detailed assessment-record cards is an important element in performing a reassessment satisfactorily.

The board will now address in more detail the several outstanding issues discussed at the June 5, 2002 hearing.

#### Level of Assessment and Coefficient of Dispersion ("COD")

The Final Report determined an April 1, 2000 overall median ratio of 89% and a COD of 14.27%. These calculations were based upon sales that occurred from October 1, 2000 to June 11, 2001, and were time adjusted to the effective date of April 1, 2001. The Final Report also

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<sup>3</sup> Cf. Sirrell v. State of New Hampshire, 146 N.H. 364, 382-383 (2001): "The legislature has [ ] granted the DRA authority to 'monitor appraisals of property and supervise appraisers' to ensure that appraisals 'comply with all applicable statutes and rules.' RSA 21-J:11, II."

reviewed and discussed several ratio studies submitted either separately or collectively by the DRA, CLT and the Town all utilizing sales that occurred in the Town from April 1, 2000 to September 30, 2000. Those ratio studies indicated a range of median ratios of 88% to 93% and CODs ranging from 10.69% to 12.91%.

On the whole, the board finds the various assessment-to-sale ratio studies indicate the reassessment complies with generally accepted assessment standards (see IAAO performance standards contained on page 9 of Final Report). However, the board notes that the level of assessment immediately following the reassessment has dropped so significantly that the Town may need to perform remedial action to improve that level of assessment even before the Town is scheduled for its first RSA 75:8-a certification by the DRA in 2006. The Town has indicated that such a review has begun and will be completed no later than April of 2005 (Municipality A at 3). The board has a lingering concern that the sales analyzed by CLT in establishing the land and building values may not have been adjusted adequately for market appreciation as of April 1, 2000. The board certainly recognizes the market at that time was, in general, in a period of rapid appreciation; however, if a sales analysis is properly performed, such appreciation can be projected to the effective assessment date so that the resulting level of assessment is closer to 100% than the various ratio studies indicate it was. Lacking an adequate sales survey (to be addressed in a later section) and the impracticality of revisiting such analysis at this point in time, the board declines to issue any remedial action other than what the Town has stated it is in

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(Emphasis added.)

the process of doing prospectively.

Adequacy of Commercial and Industrial Assessments

The Final Report, at page 15, contains stratified ratios for different property types including commercial and industrial properties. During the time period of the analysis, nine commercial and industrial sales occurred which indicated a median ratio of 118% and a COD of 25.34%. The 118% ratio for such property compared to the overall ratio of 89% raises serious questions as to whether the commercial/industrial properties were properly assessed. The board does note there were only nine such sales out of the total of 183 sales utilized in the Final Report's analysis. However, despite the small sample size, it certainly raises a red flag that requires further consideration.

Because of such a small sample size, the documentation of the market data utilized and the models and base values established for commercial and industrial properties become even more important. Such documentation should be contained in an appraisal manual and a sales survey as described and required by REV 603.14 and REV 603.15 respectively. Presumably certain sales were analyzed to establish land values for commercial and industrial property. If an inadequate number of sales occurred within the Town of Milford, it is not unreasonable for sales outside the Town to be relied upon. However, other than the income and expense spreadsheet containing a column indicating that some of the properties responding to an income and expense questionnaire sold, no analysis of those sales is done. Whatever sales were considered, they should be documented and analyzed in the fashion described in TAX 603.15. That information must be in the hands of the Town, in the form of an appraisal manual or a sales survey, before

the board determines the reassessment has been performed satisfactorily. The assessment-to-sale ratio studies, which comprise a large share of the appraisal manual and show the strata levels of assessment and CODs, are not a substitute for the analysis described in the DRA's 600 rules.

The appraisal manual does contain a several-page spreadsheet of income and expense information presumably derived from a questionnaire sent to commercial property owners. Other than an averaging of indicated rents, expenses, etc., no analysis or description of the income and expense model conclusions is contained in the appraisal manual. The capitalization rate information referenced in this manual from Property Valuation Monitor, Kopacz Real Estate Investor Survey and Price Waterhouse Coopers LLC Survey was not discussed as to how it affects the capitalization rate conclusions in the income model. The commercial neighborhoods are identified but no basis for the conclusions is given. Commercial and industrial land breakdowns are very briefly described, but again no analysis is present to support the land schedule (base values) for the five identified neighborhoods.

The board does acknowledge the Town and CLT have reviewed industrial land values and made revisions in some instances. However, no evidence was submitted to show the frequency or magnitude of the changes or how it improved assessment equity for this strata of property. Likewise, CLT indicated the appraisal manual had been recently updated. However, no new manual or new pages were submitted as evidence at the hearing. If the revised manual does not address the lack of documentation and analysis noted in the previous paragraphs, it must do so before the reassessment is complete to the board's satisfaction.

The Town shall cause all of the above information to be compiled and available for the board's tax review appraisers to review no later than August 15, 2002. It is the board's intention that all additional documentation and analysis be completed at that time so the board's tax review appraisers can review the information and file a report prior to the Town's meeting with the DRA to set its 2002 tax rates.

#### Manufactured Housing

At the June 5, 2002 hearing, the Town and CLT indicated corrections have now been made to the year of manufacture for manufactured housing and assessments have been revised prospectively. The board notes, in two assessment-to-sale ratio studies submitted by CLT dated June 7, 2001, correction of the manufactured homes' ages improved the manufactured home strata's COD from 26.43% to 9.69%. No evidence was submitted at the hearing other than testimony as to the effectiveness of such changes, and as a consequence, the board will ask its tax review appraisers to review these revisions as part of their update after the August 15, 2002 deadline mentioned in the earlier section.

#### Appraisal Manual and Sales Survey

As noted earlier, the board finds the documents submitted to date do not fulfill the DRA's 600 rule requirements for the appraisal manual and the sales survey in documenting the market and cost data utilized in developing the appraisal models used in assessing all types of properties. The board believes the provisions contained in REV 603.14 and 603.15 adequately describe what documentation, analysis and model tabulation need to be provided to complete

that portion of the reassessment satisfactorily. The board notes sections 3.1, 3.2 and 3.3 of the Contract mirror the DRA's 600 rules' requirements as to what documentation and analysis is to be included in an appraisal manual and sales survey. The board has reviewed the "appraisal manual" submitted as Addendum C to the Final Report and finds the CLT "Univers" system tables are not understandable in any fashion so as to be able to be used by anyone to manually calculate an assessment or to understand how the assessment-record card pricing was derived. The board cannot emphasize enough the critical nature of documenting, reviewing and analyzing the sales, cost and income data to create the appraisal models (schedules) that are then applied in a consistent fashion to assess all properties. This documentation and analyses then become the "touchstone" to the market for any subsequent revisions or additions that need to be made and, thus, ensures ongoing assessment consistency. The board believes part of the "appropriate enforcement measures" that were enunciated in Sirrell v. State of New Hampshire, 146 N.H. 364 (2001), already exist with proper adherence to the DRA's 600 rules. Certainly, if all reappraisals are based on a well-documented sales analysis accompanied by an appraisal manual presented in an understandable form and tied to an adaptable CAMA system, such a process would result in improved assessment consistency between taxing jurisdictions. As required in the earlier commercial/industrial section, the Town shall ensure that such products as the DRA's 600 rules require, are on hand by August 15, 2002 to be reviewed by the board's tax review appraisers.

#### Assessment-Record Cards and CDU Adjustments

The board finds the assessment-record cards currently being utilized by the Town do not comply with the DRA's 600 rules in several material ways.

First, REV 603.14(c) requires that:

“The cards shall be so arranged as to show: . . . c. all information necessary for determining the: 1. Land value; 2. Land classification; 3. Value of the buildings on the land; 4. Descriptive information of the buildings; 5. Pricing detail; 6. Depreciation allowed for physical, functional and economic factors; and 7. An outline sketch of all principal buildings on the parcel;”

and further REV 603.14 (c)(3) requires:

“(3) Any coding used by the company on the card shall be clearly explained in writing elsewhere on the card or on the attachment thereto . . . .”

Based on a review of the assessment-record card submitted by the Town as part of Municipality Exhibit B and several hundred other assessment-record cards contained as backup data to the assessment-to-sale ratio study jointly submitted by the Town, the DRA and CLT, the board concludes that both the land and building pricing detail are inadequate for any taxpayer to understand how their land and building assessments were developed.

Pricing detail adequate for land valuation should contain the parcel size, unit price for that parcel size and any size or market adjustments made to the base price. Such calculations should be available for both the primary lot and any secondary lot or supplemental land.

The building valuation portion of each card should show pricing detail containing the improvement's square footage, the base price applicable to that square footage and any quality, size and story height modifications used to arrive at the base replacement cost for the improvement. Further, additions to any living area for porches, decks, etc., should be sufficiently detailed, rather than lumped together as they are currently, so that the various

components' contributory value to the total replacement cost can be identified. The outbuilding calculations should contain pricing details indicating the price per square foot of the various structures.

CLT utilized a "condition, desirability and utility" ("CDU") adjustment which was described during the June 5, 2002 hearing as a composite adjustment based on the interrelationship between a property's age, condition and neighborhood desirability. This composite rating was used to depreciate the replacement cost of the primary dwelling. The board finds that reliance upon the CDU in lieu of physical, functional and economic depreciation is contrary to the DRA's 600 rules, the Contract and accepted industry standards. As cited earlier, REV 603.14 requires the assessment-record card contain information relative to physical, functional and economic depreciation. The Contract at 3.3.3 requires "the card shall be so arranged as to show . . . 'depreciation allowed for physical, functional and economic factors . . .'" Further, the Contract at 4.5 requires that replacement cost "values shall then be depreciated according to age, condition, utility and desirability and the appropriate amount of physical, functional and economic depreciation shall be shown on each property-record card, and a 'composite percent good' adjustment based on condition, utility and desirability shall be shown." (Emphasis added.)

The following well-accepted appraisal publications state that depreciating replacement cost by physical, functional and economic factors is the customary appraisal standard and procedure. Appraisal Standards Board, Uniform Standards of Professional Appraisal Practice, Standards Rule 6-1, 6-3 (2000 ed.); Robert J. Gloudemans, Mass Appraisal of Real Property, 6,

19 (International Association of Assessing Officers (IAAO, 1999); and Appraisal Institute, The Appraisal of Real Estate, 335, 340-41, 365, 370-71, 394 (11<sup>th</sup> ed.).

Several good reasons exist for requiring separate identification of depreciation as opposed to a composite CDU rating. Utilizing a composite CDU rating does not provide the Town officials or the taxpayers any insight or understanding as to how the appraiser judged each property's acceptance in the market based on any physical, functional or economic obsolescence unique to each property and its specific market. A composite CDU by its very nature masks the various components that comprise such an adjustment. Separately denoting the physical, functional and economic depreciation, as required by the DRA's 600 rules and the Contract, compels the appraiser to document his or her professional opinion as to factors affecting each property's value.

REV 603.14(3) requires any coding used on the assessment-record card be clearly explained either elsewhere on the card or on a separate attachment. No such explanation was presented in any of the documents submitted to date. The Town shall cause one to be compiled and available for taxpayers when they request copies of assessment-record cards.

The Town shall cause all the above revisions to the assessment-record cards to occur by August 15, 2002, or to provide a time schedule for when it will occur if such changes are not practicable before then.

### Summary

In summary, it is not the board's intent to set unrealistic requirements for finalizing the

reassessment to its satisfaction. The requirements the board has enunciated in this order are none other than what the DRA rules, the Contract and industry standards require for a reassessment to be adequately documented, accountable and applied in a consistent manner. As stated in several of the sections above, the board intends that the Town be compliant with these provisions by August 15, 2002 so its tax review appraisers can review the changes and documents in order to file a supplement to their Final Report. The board will, after submission of the supplemental report either remove its reassessment order, if the requirements laid out in this order have been complied with, or take such further action as may be necessary.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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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., counsel for the Town; Chairman, Selectmen of Milford; Roy W. Tilsley, Esq., counsel for Cole-Layer-Trumble; Paul M. Flynn, Cole-Layer-Trumble Company; and Guy Petell, Director of Property Appraisal, DRA.

Date: July 5, 2002

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Anne M. Bourque, Deputy Clerk