

**Town of Barnstead**

**Docket No.: 18263-00RA**

**Order**

The board held a hearing on November 16, 2001 to address “Petitioner’s Motion for Reconsideration” filed by Attorney Roy W. Tilsley, Jr. on November 5, 2001 (the “Motion”) with respect to the board’s October 9, 2001 Order (the “October Order”). The hearing was held to address the alleged lack of compliance by the “Town” with the October Order and the Order for Reassessment issued by the board on August 6, 2001 (the “Reassessment Order”).

Present at the hearing for the Town were one selectman, Edward A. Tasker, and several representatives (Brett S. Purvis and Loren Martin) of its outside assessor, Nyberg Purvis & Associates. Also present were the lead petitioner (George Fitzpatrick) on whose behalf the Motion was filed and several others (Paul K. Landry and Maureen Fitzpatrick), as well as Guy Petell, director of property appraisal of the department of revenue administration (“DRA”).

**Basis For Reconsideration**

At the hearing, Attorney Tilsley, on behalf of the petitioner, contended the Town should not be permitted to proceed with the 2001 update of waterfront property as contemplated in the October Order, because of the Town’s alleged failure to comply with several aspects of the Reassessment Order and alleged deficiencies in the work performed by its outside assessor. In

particular, the petitioners faulted the Town for failing to perform a valid stratified ratio study, failing to identify property categories needing adjustment other than waterfront properties and failing to provide an opportunity for informal review for corrections and revisions, all as required on page 6 of the Reassessment Order.

As relief for these alleged violations, the Motion requests the board to reconsider its October Order to prevent the Town from proceeding with the 2001 update and instead “maintain tax assessments at their 2000 levels, pending a full revaluation in 2002.” Motion at 3. The Motion also requests “costs and attorney’s fees.” Motion at 4. For the reasons set forth below, the board finds reconsideration and further relief is warranted, but not the specific remedies proposed in the Motion.

#### Effect of Update on Assessment Equity

The Town conceded that it never received or reviewed a full stratified ratio study from its outside assessor, but only the “results” of an analysis prepared by Mr. Purvis before deciding to implement increases (in varying percentages) to the assessments of waterfront properties on five of six water bodies for the 2001 tax year. These increases ranged from 34 percent (Huntress Pond) to 13 percent (Locke Lake waterfront). (The Town also determined that a decrease was needed for non-waterfront Locke Lake property.)

While the board’s review appraiser has raised substantial questions about the methodology and assumptions employed by Mr. Purvis on behalf of the Town, see October Order at p. 2, the board does not find a sufficient basis to conclude the 2001 update (in the form of the specific assessment increases determined by the Town) should be set aside. The Town, through Mr. Purvis, presented a new analysis in Municipality Exhibit B, showing the effects of

applying the 2001 update on assessment equity in the Town. This exhibit indicates the median assessment to sales ratios for waterfront properties moved closer to the town-wide median when the assessment increases noted above are applied.<sup>1</sup> (Cf. median ratios of similar strata in Mr. Hamilton's June 14, 2001 report ("Report") at page 13.) Since the goal of the 2001 update was to improve assessment equity between types of property, and the update appears to accomplish this objective to a considerable degree, the board is unable to conclude discarding the 2001 update and 'turning the clock backward' (to year 2000 values) is an appropriate remedy.

The board notes tax bills have already been sent out by the Town for tax year 2001 and the DRA's representative testified there would be further significant time lags if the board were to order the DRA to assume responsibility for work entrusted to the Town. See RSA 71-B:17. The added delays and costs involved in such a process would not, on balance, be beneficial, however culpable the Town may presently be.

#### Need to Update Non-Waterfront Property

The Reassessment Order did not obligate the Town to impose specific levels of increases in assessments or to focus solely on waterfront property in performing the 2001 update. The Town cannot be faulted, however, for concluding these strata were most in need of immediate

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<sup>1</sup> The board does note, however, the coefficients of dispersion ("COD") of the strata in Municipality Exhibit B are greater than they were for the similar strata in the Report indicating greater variability in the assessments. The time period of the sales utilized in Exhibit B is one year after the end of the time period for the sales utilized in the Report and one year further removed from the last town-wide reassessment in 1986. Thus, larger CODs (greater variability) are not surprising.

adjustment. In any event, insufficient evidence was presented at the hearing to challenge this conclusion. The 2002 full revaluation ordered by the board should address concerns about other strata of property which may be in need of further adjustments.

#### Violation of Informal Review Requirement

Upon closer questioning, the Town conceded the waterfront property owners affected by the 2001 assessment update were not specifically notified of an opportunity for informal reviews to correct and revise, as necessary, any errors in their assessments. Although the Town argued “any” property owner has the right to such a review at “any” time, the board finds the Town’s position is in conflict with the letter and intent of the Reassessment Order, which provides, at page 6, “the Town shall notify the taxpayers in strata with assessment changes and provide an opportunity for informal review for corrections and revisions.”

The lead petitioner has submitted as evidence the Town’s letter dated September 21, 2001 to property owners, a letter not received until several weeks later (October 11). This notice is misleading in several respects, including the absence of any mention of the availability of informal reviews. In fact, the notice gives a clear indication to the contrary that taxpayers wishing to question the 2001 assessment values must wait until tax bills are issued and then apply for an abatement before March 1, 2002.

To correct this situation, the board orders the Town to prepare and send written notices to each “property owner” affected by the 2001 update not later than December 7, 2001, advising them that, in addition to their later maturing right to apply for an abatement, they have a more immediate and direct opportunity to discuss with a knowledgeable and responsible Town representative any “corrections or revisions” to their assessment they believe are appropriate, as

specified in page 6 of the Reassessment Order. The notice should provide, as stated in the October Order at p. 3, that “any taxpayers who are unable to satisfactorily resolve their concerns during the Town’s informal review have the RSA 76:16 (abatement requests) and RSA 76:16-a and 17 (appeal to board or superior court) avenues of recourse.”

The Town should schedule and announce in its notice at least two and one-half full (8-hour) days for these informal reviews, including one weekend day, to occur not later than January 25, 2002, and should permit property owners who are out-of-state an opportunity to participate in the informal reviews by telephone rather than in person. The Town may ask the property owners to schedule specific appointment times or, if it prefers, handle the informal reviews on a “first come, first served” basis. (See Attachment A for an example of the informal review procedures used by Nyberg Purvis in another municipality.)

#### Other Issues

In response to a concern raised by the board in its October Order, the Town indicated Mr. Purvis performed the work underlying the 2001 update for the Town without a separate written contract or compensation, but rather as a concession as part of his work on the 2002 revaluation. The board reviewed a copy of the contract pertaining to the 2002 revaluation (Municipality Exhibit C), and concludes the work performed by Mr. Purvis for the 2001 update is not covered by the 2002 contract. In retrospect, as Mr. Guy Petell testified, the update work should have had a separate approved contract. RSA 21-J:11 requires any person engaged “in the business of making appraisals of taxable property for municipalities . . .” shall do so with a contract approved by the DRA. Here again the board cannot “turn back the clock” and cure this technical defect of the update. However, Mr. Purvis and the Town should be mindful of this requirement

in the future.

The board has reviewed the petitioner's request for "costs and attorney's fees . . . pursuant to Tax 201.39." Attorney Tilsley clarified at the hearing the Motion seeks recovery of the attorney fees for preparing for and attending the hearing, but no costs. The request for attorney's fees is denied because the supreme court has recently held the board has no "inherent authority" to award such fees, but only such authority as may be conferred by statute. See Appeal of Land Acquisition, No. 98-672 \_\_ N.H. \_\_ (December 8, 2000), <http://www.state.nh.us/courts/supreme/opinions/0012/landacq.htm> ; cf. RSA 21-J:28-b, VI.

#### Conclusions

The board has reconsidered its October Order in light of the concerns expressed in the Motion and the evidence presented at the hearing. The revealed shortcomings in the Town's compliance with the board's orders, while substantial, are not sufficient to suggest the results of the 2001 update already performed and announced by the Town should be discarded. To the contrary, the evidence submitted by the Town suggests the update will advance the continuing objective of increased assessment equity, an objective the board hopes is shared by the selectmen, the Town's outside assessor, the petitioners and all fair-minded taxpayers in the Town.

The board has ruled, however, that the Town must implement the informal reviews with respect to the 2001 update, as specified in the Reassessment Order. This process should provide property owners with another avenue for correcting alleged errors or discrepancies in the Town's assessment records, which were last revised in 1986. The board has further spelled out a procedure and time lines for this process in this order. The Town must also complete a full

revaluation for the 2002 tax year to further accomplish the goal of assessment equity. All other

aspects of the Reassessment Order and the October Order remain in full force and effect, including the Town's obligation to inform the board of its progress in carrying out the reassessment on a quarterly basis.

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 a copy of the foregoing order has been mailed this date, postage prepaid, to: Chairman, Board of Selectmen, Town of Barnstead; Roy W. Tilsley, Jr., Esq., counsel for George Fitzpatrick, Lead Petitioner; Taxpayer, 82 Winwood Drive, Barnstead, Lead Petitioner; Guy Petell, Director of Property Appraisal, DRA; Joanne Heger, Interested Party; and Karl E. Bahr, Interested Party.

Date: November 30, 2001

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Lisa M. Moquin, Clerk