

Town of Barnstead
Docket No.: 18263-00RA
Order for Reassessment

On August 30, 2000 a petition of greater than fifty taxpayers was filed with the board pursuant to RSA 71-B:16 IV, requesting the Board order a full revaluation of the Town of Barnstead (hereafter "Town"). Based on evidence received at a preliminary show cause hearing held on October 16, 2000 and the statistical results contained in the study performed by the Board's Tax Review Appraiser, Mr. Stephan Hamilton, submitted on June 14, 2001 (hereafter "Report"), the board held a show cause hearing on July 26, 2001, to receive further testimony and evidence from the Town and Barnstead taxpayers as to whether the board should order a reassessment. Present and testifying at the hearing were Roy Tilsley Jr, Esq., representing the petitioners, and Edward Tasker, chairman of the board of selectman, Francis Sullivan, selectman, Brett Purvis, contract assessor for the Town and Mr. Stephan Hamilton. Several representatives for the Department of Revenue Administration (hereafter "DRA") were also present but did not testify.

Atotrney Tilsley argued that the Board should order reassessment so as to assert its jurisdiction and oversight to ensure that the reassessment is done properly and in a timely

manner for tax year 2002. He stated the report supports the taxpayer's position that a full assessment is necessary to correct the inequities within the tax base. Attorney Tilsley also argued he did not believe an interim update of the waterfront assessments was proper without individualized assessments being performed for all property owners within the Town because some of the physical data in the assessment records are incorrect and need to be improved by a complete measure and list reassessment.

Representatives of the Town argued that they recognize the need for a complete reassessment for the tax year 2002 and have accelerated their original plans to have one done over a five year time frame. They stated a contract has been signed with the company of Purvis & Nyberg, to complete reassessment for tax year 2002 and that \$75,000, approximately half of the total cost of the reassessment, was appropriated at the 2001 town meeting. The selectmen stated that it is their belief the balance of the necessary funds would be appropriated at the upcoming 2002 meeting to complete the reassessment by September 15, 2002. The selectmen also stated that while it was not against the board ordering a reassessment for 2002, they believe because of the Town's ongoing plans to fund and complete the reassessment for 2002 and DRA's monitoring of the reassessment, such an order would not be necessary. The Town did state however, that, based on the Report, a board order to perform an interim update on waterfront properties for the 2001 tax year would be appropriate.

Right to Equitable Assessment

The right to equitable assessment and taxation is guaranteed not only by statute (see RSA ch. 75) but, even more importantly, by the New Hampshire Constitution. N.H. CONST. Pt. 1, Art. 12th and Pt. 2, Art. 5th and 6th. "In this State probably no constitutional principle is better understood than that the taxation of property requires a proportional valuation and a uniform

rate." Opinion of the Justices, 81 N.H. 552, 558 (1923). Note is made of the following pertinent decisions of the supreme court, among others: Sirrell v. State of New Hampshire & a., No. 2001-003, __N.H.__, <http://www.state.nh.us/courts/supreme/opinions/0105/sirre087.htm> (May 3, 2001); Opinion of the Justices, (Reformed Public School Financing), No. 00-179, __N.H.__, <http://www.state.nh.us/courts/supreme/opinions/00012/ojschool.htm> (December 7, 2000); Claremont School District v. Governor, 142 N.H. 462, 471 (1997); Opinion of the Justices, 106 N.H. 202 (1965); Opinion of the Justices, 101 N.H. 549 (1958); Rollins v. City of Dover, 93 N.H. 448 (1945); Trustees of Phillips Exeter Academy v. Exeter, 92 N.H. 473 (1943); Town of Bow v. Farrand, 77 N.H. 451 (1915); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 336 (1900); Winnepiseogee Lake Cotton & Woolen Mfg. Co. v. Town of Gilford, 67 N.H. 517 (1896); State v. United States & Canada Express Company, 60 N.H. 219 (1880); Edes v. Boardman, 58 N.H. 580 (1879); Morrison v. City of Manchester, 58 N.H. 538 (1879); and Opinion of the Justices, 4 N.H. 565 (1829).

Board's Rulings

RSA 71-B:16, III provides:

Order for Reassessment. The board may order a reassessment of taxes previously assessed or a new assessment to be used in the current year or in a subsequent tax year of any taxable property in the state: . . .

III. When in the judgment of the board, determined in accordance with RSA 71-B:16-a, any or all of the property in a taxing district should be reassessed or newly assessed: . . .

RSA 71-B:16-a provides:

Criteria for Ordering Reassessment. Prior to making any determination to order a reassessment or a new assessment under RSA 71-B:16, III, the board shall give notice to the selectmen or assessors of the taxing district and, if requested, hold a hearing on the matter at which the selectmen or assessors shall have the opportunity to be heard. The board shall not order any such reassessment or new

assessment unless it determines a need therefor utilizing the following criteria:

- I. The need for periodic reassessment to maintain current equity.
- II. The time elapsed since the last complete reassessment in the taxing district.
- III. The ratio of sales prices to assessed valuation in the taxing district and the dispersion thereof.
- IV. The quality of the taxing district's program for maintenance of assessment equity.
- V. The taxing district's plans for reassessment.

The testimony at the hearing focused on two general issues: 1) whether the board should order an assessment update of waterfront properties for the 2001 tax year; and 2) whether the board should order a full reassessment for 2002 given the Town's ongoing plans to perform one.

2001 Assessment Update

The board finds the Report indicates a need for an immediate update of the waterfront properties for the 2001 tax year to improve the Town's assessment equity. The Report, at page 13, also indicates a median ratio of assessment to sales throughout the Town of .67 ("utilizing sales that occurred from October 1, 1998 to September 30, 2000, adjusted for appreciation") while the valid waterfront sales indicated a median ratio of .55, a difference of approximately 28% ($.55 \div .67$). As Mr. Hamilton testified to at the hearing, the Report utilized waterfront assessments reflecting the 1.15 adjustment factor applied by the Town to such properties for tax year 2000. Even after utilizing those adjusted assessments substance, the 28% difference indicates there still exists a statistically significant difference between the level of assessment of the waterfront and non-waterfront assessments properties throughout the Town.

The petitioners argued that: 1) the board did not have the authority to order such updates and 2) any such order would be inappropriate because it would be based on adjusting assessments whose physical data needs to be improved. RSA 71-B:16 III, gives the board the explicit authority to order a reassessment “(w)hen in the judgement of the board any or all of the property in a taxing jurisdiction should be reassessed or newly assessed”... (emphasis added). The board agrees with the petitioners that the ideal situation would be to have the excellent property listing data on which to perform any assessment update. However, to put off any revision to strata of properties such as the waterfront, which shows such a significant different level of assessment, would continue inequities for another year whereas an interim adjustment would be more appropriate. Further, as cited earlier, there is “no constitutional principle...better understood than that the taxation of property required a proportional valuation...” Opinion of the Justices, 81 N.H. 552, 558 (1923). Further, the 16.51 percent coefficient of dispersion (COD) contained in the Report at page 13 for valid waterfront sales indicates the variability of assessments of waterfront properties is significantly better than that for non-waterfront properties. If the physical data was so bad as to unrelated to market influences one would expect a much higher COD. Also, in practical terms, waterfront properties have a higher land to building ration than non-waterfront properties and that any errors in the physical date of the improvement is minimized by so much of the value being contained in the land component of the value.

Consequently the board orders the Town perform a stratified ratio study including sales subsequent to, but not necessarily exclusive of, sales after the Report’s time frame (i.e. sales after September 30th, 2000). The Town will need to perform a ratio study of all sales within the Town to be able to estimate its target level of assessment for all properties throughout the Town

and stratified studies to identify those areas where interim adjustments for tax year 2001 would be appropriate. After determining which strata should be adjusted and to what magnitude the Town should notify the taxpayers owning property in the strata of the proposed assessed value and provide an opportunity for input in corrections of the physical data. The board is aware of the shortness in the time in which to form such a study and that the Town may need to request an extension from the DRA for submitting its revised assessments for calculating the 2001 tax rate.

The Town shall notify Mr. Stephan Hamilton when they have performed a ratio study and determined what properties and to what extent the assessments are going to be modified for tax year 2001. The board also will direct Mr. Hamilton to perform a subsequent sales analysis to the 2001 update after enough time has elapsed for new sales to occur to measure the affect of the adjustment.

2002 Reassessment

Based on the time elapsed since the last general reassessment (1986) the level of assessment overall and stratafied and the associated CODs contained in the report and the testimony presented as to the need for improving the overall physical data of the assessment records, the board concludes that a reassessment should be ordered for tax year 2002. The Town should be commended for recognizing the need and proceeding with efforts to put in place a contract to accelerate plans to do the reassessment, put in place a contract to carry it out and appropriate half the funds at the annual town meeting. The board's order should not be seen as disruptive to those plans but simply reenforcing the Town's reassessment efforts and ensure the balance of the funds are raised at 2002 and the reassessments completed in a timely fashion.

The reassessment must comply with the applicable statutes and regulations, including Part 600 of the DRA's rules on reassessment. Further, the board is requesting Mr. Hamilton to

review on an ongoing basis the procedures and analysis that will be employed during the 2002 reassessment. The involvement of Mr. Hamilton is not intended to plan the selectman's assessment responsibility or to be duplicative of the DRA's responsibility to monitor appraisal pursuant to RSA 21-J:11 II. Rather, based on other ordered reassessments, the board believes in active participation by its review appraiser during the reassessment process will be beneficial to the Town instead of waiting until the reassessment process is complete. In short, the board wants to ensure, as much as possible, the Town receives the highest quality reassessment for the funds expended.

Therefore, the Town shall notify the board, in writing, starting September 1, 2001, and every three months thereafter, as to its progress in carrying out this complete reassessment order.

Upon receipt of this order the selectmen shall post the order in two public places within the Town.

SO ORDERED.

Board OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

George Fitzpatrick, et al. v. Town of Barnstead
Docket No.: 18263-00RA

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copies of the foregoing order have been mailed this date, postage prepaid, to Chairman, Board of Selectmen of the Town of Barnstead; Roy W. Tilsley Jr., Esq.; Joanne Heger, Administrator, Locke Lake Colony Association; Karl E. Bahr, Taxpayer; and Guy Petell, Director of the Property Appraisal Division, DRA.

Dated:

Lisa M. Moquin, Clerk