

Town of Columbia

Docket No. 18361-00RA

ORDER

This order responds to the department of revenue administration's ("DRA") March 2, 2001 Motion for Reconsideration ("Motion"). Such motions are governed by RSA 541:3 and TAX 201.37(d); the moving party has the burden of establishing "good reason" to grant the motion: specifically, "a showing shall be required that the [b]oard overlooked or misapprehended the facts or the law and such error affected the [b]oard's decision." The Motion is denied, but the board takes this opportunity to clarify some of the issues raised by the DRA.

The DRA asserts the board improperly considered the financial impact on Columbia of ordering an earlier reassessment. We disagree. The legislature provides five distinct criteria in RSA 71-B:16-a for the board to consider in determining whether to order a reassessment, one of these being "V. The taxing district's plans for reassessment." The board's acknowledgment of the Town's financial plans in its February 5, 2001 Order for Reassessment ("Order") was done within the context of the Town's reassessment plans as provided in RSA 71-B:16-a, V.

To better understand the board's conclusion, the following discusses how the board applied the five RSA 71-B:16-a criteria to the arguments and testimony presented at the hearing.

In its RSA 21-J:3, XXX petition, the DRA presented several arguments regarding the

need for reassessment:

- 1) the time elapsed since the last reassessment in 1990;
- 2) the coefficients of dispersion (“CODs”) of 44.01, 14.85 and 20.58 for 1997, 1998 and 1999 respectively;
- 3) the apparent lack of understanding of CODs in the Town;
- 4) the lack of any specific plans for an update or reassessment; and
- 5) the Town having a COD greater than 20 in two of the last three years and no reassessment in the past ten years.

In his November 14, 2000 study (“Study”), the board’s review appraiser stated the Town had initiated plans for a complete reassessment prior to the time of filing the DRA petition. (Study at 13.) Additionally, at the January 11, 2001 hearing, the Town stated it had planned to conduct an update of manufactured homes for 2001 and to raise additional funds over the next several years, to be added to the \$10,000 appropriated in 1999, to perform a complete reassessment for 2004. The Town stated the DRA’s “monitor” was aware of the Town’s intentions, but advised the Town not to proceed with the manufactured-home update as such an update had not been successful in some other municipalities and, in any event, the DRA was going to file a petition regarding the Town. The selectmen testified they recognized the recent CODs were high largely due to the need to review and adjust the manufactured-home assessments. They further stated that if one of the manufactured-home sales in the DRA’s 1999 equalization survey, which they subsequently determined was a family sale, was excluded, the 1999 COD would have been less than 20 and would not have “triggered” the DRA’s petition to

the board.

Quite frankly, the board finds the DRA's request for the board to reconsider and order an earlier total reassessment is inconsistent with its testimony at the hearing. Although the Motion now emphasizes the need for an immediate reassessment, the DRA's representatives took a different position at the hearing. Prior to the close of the hearing, the board asked the DRA to give its "recommendation" regarding how and when the reassessment should be accomplished. In response to this question, both Attorney Bennett, counsel for the DRA, and Mr. Petell, Director of Property Appraisal for the DRA, indicated that the Town's belief that it needed up to three years to accomplish a reassessment was "reasonable."¹

The board's conclusions reflected in the Order were based on the following findings and concerns:

¹ On the record, Attorney Bennett stated: "[O]ne could start the process doing the project over a period of time so that it is completed in a reasonable period of time. In other words, . . . it could start with mobile homes if that's the worst part . . . [and] go on to the next class of property. . . . It seems to me that's a reasonable way to go about it. . . . I'm inclined to think two or three years is about as far as you could go and still have any kind of credible reassessment program." (Hearing Tape at 2658). Mr. Petell, when asked the same question, stated: "I agree with Mr. Bennett that something over the course of the next two or three years would be fine." (Hearing Tape at 2669).

1) there was an immediate need for a reassessment update of manufactured homes given the significantly higher level of assessments for manufactured homes than other property in the Town as found by the Study at pages 10 and 11 and supported by the selectmen's testimony;

2) some other property strata (land and older improvements) also showed high levels of assessments, but because of the Town's manual assessment system, such strata would be difficult to update;

3) the time elapsed since the last reassessment, the overall CODs and the stratified CODs indicate a need for a reassessment;

4) the Town had plans for doing both an update and a complete reassessment and its schedule for doing so was reasonable and was supported by testimony from the DRA's officials;

5) the DRA's two criteria are not part of any statute, agency rule or emergency rule, but rather is a policy based on IAAO standards which also recognize that CODs can vary based on property type, size and homogeneity of a community (See Study at 6);

6) the DRA's CODs and the Study's town-wide COD were not of such a magnitude to warrant an earlier complete reassessment, especially in light of the ordered manufactured-housing update for 2001; and

7) the Town has a fairly large amount of its tax base (35%) comprised of utility property whose assessment equity is not measured by the DRA's or the Study's CODs.

Consequently, any inequities indicated by the CODs relates to only 65% of the tax base.

The Motion reflects some confusion regarding the respective roles and responsibilities of the DRA and the board in the assessment process. Pursuant to RSA 21-J:3, XXV, the DRA is authorized to “petition” the board, based upon the DRA’s own procedures for determining which municipality *might* need to be reassessed, if it finds “the valuation of property for equalization purposes in a particular city, town, or unincorporated place is disproportional to the valuation for equalization purposes in other cities, towns, or unincorporated places in the state.” This statute makes specific reference to the board’s powers to order a reassessment “under RSA 71-B:16-19.”

In contrast to the mandatory (“shall”) language governing the DRA’s duties in RSA 21-J:3, the board’s authority under RSA 71-B:16 et seq. is permissive and discretionary. RSA 71-B:16 begins by stating the board “*may* order a reassessment” (emphasis added) under various circumstances, including when a petition is filed by the DRA under RSA 71-B:16, V. RSA 71-B:16-a, which lists the five criteria emphasized in the Motion, makes specific reference to RSA 71-B:16, III, and therefore conditions an order for reassessment on “the *judgment* of the board” (emphasis added). The board’s authority under RSA 71-B:16-a permits it to conduct a hearing to help it determine, using its own judgment and evidence submitted by the Town’s “selectmen or assessors,” whether there is a “need” for reassessment. In such instances, the board must also apply its judgment to determine what type of reassessment is needed, how urgent the need is and how best it can be accomplished. In applying its own judgment on these issues, the board is not precluded from considering cost and timing concerns in the context of the Town’s “plans for

reassessment,” especially in light of the plain language of RSA 71-B:16-a, V.²

In summary, the board denies DRA’s Motion and the Town should proceed as already stated in the Order for Reassessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

² The board interpreted Mr. Bennett’s comments at 2510 of tape to also mean the Town’s financial issues related to funding a reassessment are but part of the Town’s commitment to its plan for a reassessment. “In terms of working up a workable program for Columbia reassessment, I think that is something the board needs to consider and certainly the Town’s fiscal and other issues need to be taken into consideration in doing that.”

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CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to: Chairman, Selectmen of Columbia; Gut Petell, Director, Property Appraisal Division, Department of Revenue Administration; and, Mark Bennett, Esq., counsel, Department of Revenue Administration.

Date: March 21, 2001

Lynn M. Wheeler, Clerk

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