

**City of Claremont**

**Docket No.: 18398-00RA**

**ORDER**

**I. Issues Before the Board**

**A. The City's Motion**

The board held hearings on October 8 and 14, 2003 with respect to the “Motion for Extended Deadlines” filed by the “City” on September 16, 2003 (the “Motion”). The Motion requests “an extension on the completion and implementation of [the City’s] reassessment” so that it is effective for tax year 2004 rather than tax year 2003.

The Motion seeks modification of the Order for Reassessment dated September 6, 2001 (the “Reassessment Order”), which required the City to complete a reassessment effective April 1, 2003. The Reassessment Order is summarized further below.

In the Motion, the City presented two sets of concerns regarding compliance with the Reassessment Order: (i) the implications of a recent superior court opinion in a taxpayer appeal involving another municipality<sup>1</sup> which allegedly “will subject the City to expensive litigation, ridicule, and other time consuming challenges” (Motion, ¶6); and (ii) a belief that the quality of the reassessment can be improved if it is delayed from tax year 2003 to tax year 2004.

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<sup>1</sup> Mascoma Parks, LLC v. Town of Enfield, Docket # 01-E-162 (April 2, 2003). A copy of the “Enfield” opinion is attached as Exhibit 1 to the Motion.

David McMullen, Assessor, and Guy Santagate, Manager, testified on behalf of the City. The board also heard testimony from: Gary Fields, Director of Appraisal Operations of Vision Appraisal Technology (“Vision”), the City’s assessing contractor; several employees (Robert Camp, Appraiser Supervisor and Robert Boley, Director, Community Services Division) of the department of revenue administration (the “DRA”); and the board’s tax review appraiser (Cynthia Brown). Also present, but not testifying, were several other DRA representatives (Barbara Reid, Assistant Commissioner, and Guy Petell, Manager, Bureau of Assessments); another member of the City’s assessing staff (Michael Pietraskiewicz); and a second Vision representative (David Arnold, the project supervisor).

#### B. Prior Proceedings and Reassessment Order

The need for a timely and complete reassessment in the City is not in dispute and has been examined extensively in prior board proceedings. The last full reassessment occurred in 1990, thirteen years ago.

The board opened this docket with an Order dated November 15, 2000, directing its review appraiser to submit a report concerning the City’s assessment practices. This report was submitted to the board on May 24, 2001 and copied to the City.

Based on the report and other factors, including the time elapsed since the City’s last revaluation, the board held a hearing on August 7, 2001 and received testimony from the City, the DRA and others, including taxpayers, regarding whether the board should exercise its RSA 71-B:16 authority to order a reassessment. At that time, the City acknowledged the need for a reassessment, but proposed it not be ordered until tax year 2004, while another witness, a

taxpayer and member of the City Council (Alan Whipple), urged the board to order completion by tax year 2002.

The requirement for periodic reassessments has also been recently addressed by the supreme court. In Sirrell, the supreme court emphasized the constitutional imperative that “property be assessed at market value at least every five years.” See Sirrell v. State, 146 N.H. 364, 382 (2000); citing N.H. Constitution, Part II, Article 6 and Part II, Article 5; Opinion of the Justices, 76 N.H. 588, 595-96; and RSA 75:1 and 75:8.

On September 6, 2001, noting Sirrell, supra, and other authorities, the board issued the Reassessment Order, requiring a full reassessment for tax year 2003 (preceded by a planned manufactured housing update in tax year 2002); the board also ordered the City to review its current-use records and to update and revise its tax maps as part of the reassessment process; in addition, the City was required to notify the board in writing every three months beginning January 1, 2002 “regarding its progress in carrying out tax map revisions, the 2002 update and the 2003 complete reassessment.”

## **II. Board’s Rulings**

Based on the evidence presented and for the reasons explained below, the board denies the Motion. The board finds neither of the two sets of arguments presented by the City and discussed further below justifies a further delay in completing the reassessment.

### A. The Enfield Opinion

The board first notes its disagreement with the Enfield opinion presented by the City to support the Motion, as well as the concerns expressed regarding its impact (see ¶¶ 5, 6 and 14).

Enfield involved a private taxpayer appeal against another municipality and is not binding on the City. Since the board has concurrent jurisdiction with the superior court pertaining to tax appeals, cf. RSA 76:16-a and RSA 76:17, the opinion of the Enfield trial judge (which was not appealed) is also not one the board is bound to follow. In presenting his arguments, counsel for the City candidly questioned the validity of the reasoning in the Enfield opinion.

The board also finds its reasoning and holding to be questionable, at best, to the extent it is read to conclude a municipality must complete the reassessment process in the month of April to make it ‘legal.’ If this is its meaning, the board respectfully submits the Enfield opinion is based upon an overly-narrow reading of RSA 76:2. This statute establishes an April 1/March 31 tax year and provides that “all property taxes shall be assessed on the inventory taken in April of that year.”

While municipalities are required to take an inventory (physical identification of property subject to taxation) every April to meet various statutory obligations, this does not mean or imply that the valuation process pertaining to the inventory, when a municipality is performing a reassessment, must be completed “in April” in order to be valid. This conclusion does not withstand scrutiny when the entire statutory framework established by the legislature is recognized and given full effect.

This statutory framework includes:

- RSA 76:5, which requires the selectmen to “seasonably assess” all taxes, a task that cannot be completed until all values are submitted to the DRA by September 1 of each year, see RSA 21-J:34, III;

- RSA 76:10, which provides “The selectmen shall assess such taxes to the owner as of April 1 . . .” (emphasis added) and undercuts any mistaken interpretation that the valuation process must, of necessity be completed in the month of April;
- RSA 76:15-a and RSA 76:15-b, which allows municipalities to utilize semi-annual billing, with ‘preliminary’ bills issued “no later than June 15” and ‘final’ bills “due and payable December 1”;
- RSA 72:23-c and RSA 79-A:5, II, which provide for the filing of exemptions (for educational, charitable and religious institutions) and current use applications, respectively, up to the time “the local tax rate has been approved” (i.e., on or after September 1 of each year)
- RSA 72:7-a, which provides for the proration of the assessed value of manufactured housing based on the length of time it is located within the municipality;
- RSA 74:8, which allows for an extension of time to file the inventory blank until June 1, due to “accident, mistake or misfortune”; and
- RSA 74:1, as amended July 21, 2003 (effective July 1, 2003), Ch. 307, NH 2003 Session Laws, which now clarifies the selectmen’s responsibility to take an inventory “as of April 1” of each year.

In brief, careful consideration of the entire statutory framework leads to the conclusion that a two-step inventory compilation and valuation process is contemplated: i.e., completion of a physical inventory (the identification and listing of taxable property) in April of each year,

followed by the determination of the assessment of each property, based upon market values “as of” April 1 of that year. A municipality undergoing a reassessment can accomplish this requirement, even if the process is not completed on April 1 or during the month of April, and still be in compliance with the present statutory framework and established practices within the State.

Upon questioning from the board, counsel for the City conceded the Enfield opinion is problematic in light of the overall statutory framework and is inconsistent with accepted municipal and State assessment practices. He suggested an amendment to RSA 76:2 could be promptly sought in the Legislature to overcome the perceived problems with the Enfield opinion.

Based on these considerations, the board finds reliance by the City on the Enfield opinion to support the granting of the Motion is misplaced. As noted by the board at the hearing, it is clear that extending the deadline for the City’s reassessment from tax year 2003 to completion in “April, 2004” (because of, or in light of, Enfield) would subject the City to at least as many potential problems (such as the “expensive litigation, ridicule, and other time consuming challenges” mentioned in the Motion) as following that opinion would entail.

#### B. The Evidence Presented

The second set of reasons presented in support of the Motion (¶¶ 9 – 14) is a belief that the City needs more time to perform and that the quality of the reassessment will be significantly improved if completion is delayed until tax year 2004. The board has carefully weighed the conflicting evidence presented, as well as considerations of equity and fairness to the taxpayers of the City, and has concluded the City failed to satisfy the requisite burden of proof.

Some understanding of the relevant chronology is useful. The Reassessment Order was issued on September 6, 2001, more than two years before the City filed the Motion. In the interim two year period, the City submitted regular quarterly reports to the board indicating the reassessment for tax year 2003 was proceeding without undue problems or delays. The steps taken by the City included the hiring of a full-time assessor (David McMullen) and an assistant, the completion of the 2002 update, and the hiring of Vision to perform and complete the 2003 reassessment.

In the City's quarterly update to the board dated July 8, 2003, Mr. McMullen noted the following: "All fieldwork and data entry is complete, . . . The sales analysis is complete with the exception of continuing minor adjustments, as a result of the field review process and/or the receipt of new data. The Residential field review is also complete, including vacant land. The Commercial & Industrial review should be finished shortly." (Emphasis added) Mr. McMullen did note some work was being conducted on "an internal review of a sample of the new [assessment record] cards for consistency of data elements and values." He then concluded by stating the City hoped to hold informal hearings with taxpayers questioning the assessments "sometime [in] late July to early August, once the C&I review is complete and turned over to the City by 15 August, though I feel at this time a slightly later date is more realistic."

In a letter to Vision dated August 22, 2003, Mr. McMullen stated the City "extends the revaluation contract until 15 October 2003 in order to provide Vision the necessary time to complete the project. As discussed, we are most interested in receiving a quality product at the loss of imposing penalties for project lateness."

At some later point, however, the City decided it wanted to delay the reassessment and, on September 16, 2003, the Motion was filed with the board. Until the Motion, the City gave every indication, in its periodic written reports to the board, of both its willingness and ability to complete the reassessment for tax year 2003.<sup>2</sup> The board then heard two days of testimony pertaining to the Motion.

In his testimony, Mr. McMullen noted various unresolved issues pertaining to the reassessment. These issues included: some inconsistencies and perceived errors he discovered during field review pertaining to story height, depreciation, grades and finished living areas on selected properties; sales subsequent to April 1, 2003 indicating, in his opinion, a lower overall level of assessment and higher coefficient of dispersion (“COD”) than is desirable or appropriate during a reassessment year; inconsistent (relatively high or low) stratified ratios among different property types; some delay in finalization by Vision of its analysis with respect to commercial and industrial properties and less than adequate delineation of neighborhoods, which extended the “turnover” date of all values to the City; and the lack of sufficient time to further review all preliminary values, make corrections and hold informal hearings with taxpayers. After the first day of hearings, Mr. McMullen proposed a six-month schedule, running from December, 2003 to May, 2004 (see Municipality Exhibit B), for the City and Vision to resolve these issues.

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<sup>2</sup> The board was somewhat disconcerted to learn for the first time from testimony at the hearing that Mr. McMullen and his staff decided to devote significant time to listing and valuing new property as of April 1, 2003 for the current tax base, rather than spending more time earlier in the process reviewing Vision’s progress and value setting; the Vision values in the reassessment were intended to replace all of the values in the City’s existing tax base, including new construction as of April 1, 2003. One clear implication from this testimony is that the City anticipated the possibility, much before the filing of the Motion in September, that the new values ordered by the board for tax year 2003 through the reassessment would not be implemented.

City Manager Santagate then testified he believes the board was “right” to order a reassessment in Claremont and that the City has successfully completed the update of manufactured housing values and corrected other inequities (such as substantially lower commercial assessments on Washington Street). He requested the board extend the reassessment timetable to tax year 2004, however, because it was important for the City “to get it right”: while timeliness is important, he did not want the City to meet an “artificial” deadline and “risk” not getting it right.

The testimony of Vision’s representative (Gary Fields) is somewhat at odds with the City’s position. While nominally supportive of the City’s request to extend the reassessment until tax year 2004, Mr. Fields expressed ‘full confidence’ in the tax year 2003 reassessment it is performing for the City. He also testified he had not received a copy of the Motion and did not know the City would be presenting evidence of alleged defects in the quality of work done by Vision. He stated Vision is a reputable company with extensive reassessment experience working in a number of New Hampshire municipalities (see also footnote 3 infra), and stated all issues pertaining to the tax year 2003 reassessment could be worked out.

The board also received testimony from several DRA representatives. Robert Camp acknowledged the discovery of some measurement errors during DRA’s monitoring process, but noted that most were “compensating” errors that did not affect the “bottom line” assessment materially on any given property.

Robert Boley then testified and indicated the DRA was taking “no position” on whether the reassessment should be implemented in tax year 2003 or delayed until tax year 2004, as

requested in the Motion. He confirmed the City is scheduled for a certification review by the DRA in 2003. See RSA 21-J:11-a, as amended July 21, 2003 (effective July 1, 2003), Ch. 307, NH 2003 Session Laws. He indicated if the City failed to complete the reassessment in tax year 2003, this fact could be noted in the DRA's certification review process.

On balance, the board is not persuaded that a satisfactory reassessment cannot be completed for tax year 2003, especially if all parties cooperate and work towards accomplishing this goal. The board has reviewed all of the selected examples of listing errors on sale properties submitted by the City and contained in Exhibit C; the board finds any needed revisions to the land and building valuation models can be completed, if the work is performed diligently by Vision and the City's assessing staff, with the continued involvement of the DRA, in a matter of weeks (rather than six months), leaving more than sufficient time to set values for the current tax year and issue tax bills.<sup>3</sup> At least of equal importance, completing the reassessment in tax year 2003 will help achieve the overriding objectives of increasing assessment equity and preserving the constitutional mandate of proportionality sooner rather than later. For all of these reasons, the Motion is denied.

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<sup>3</sup> See also the board's recent decision pertaining to the Town of Sanbornton (Docket No.: 19517-03RA, October 2, 2003). In Sanbornton, Vision contracted to complete its work as late as December 17, 2003 for a tax year 2003 reassessment; after hearing extensive testimony, the board denied an attempt to postpone the reassessment until tax year 2004 because of anticipated timing problems. In comparison, the City will have a much longer time period to complete all the requisite steps for a tax year 2003 reassessment. Further, as the board found in Sanbornton, DRA should be available, if necessary, to act expeditiously to set tax rates and perform all of its other related duties.

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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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify that a copy of the foregoing Order has been sent this date, postage prepaid, to: Matthew H. Upton, Esq., counsel for the City, P.O. Box 13, Hillsborough, NH 03244, Fax: 603-464-3269; David McMullen and Guy Santagate, City of Claremont, 58 Tremont Square, Claremont, NH 03743, Fax: 603-542-7014; Gary Fields, Vision Appraisal Technology, 44 Bearfoot Road, Northboro, MA 01532, Fax: 508-351-3797; and George P. Blatsos, Robert Boley, Guy Petell and Robert Camp, Department of Revenue Administration, 45 Chenell Drive, Concord, NH 03301, Fax: 603-271-1161. Copies of the Order were also faxed to these persons on this date. Courtesy copy sent to: Chairman, Board of Selectmen, Town of Sunapee, P.O. Box 717, 23 Edgemont Road, Sunapee, NH 03782.

Date: October 17, 2003

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Anne M. Bourque, Deputy Clerk