

Town of Deering

Docket No.: 18409-00RA

ORDER FOR REASSESSMENT

On December 19, 2000, a petition was filed with the board by the department of revenue administration (“DRA”) pursuant to RSA 21-J:3, XXV, requesting the board order a reassessment in the Town of Deering (“Town”). On September 4, 2001, a public hearing was held in accordance with the board’s August 22, 2001, amended show cause order to receive testimony and evidence to determine if the board should order a reassessment pursuant to its authority in RSA 71-B:16, III. The hearing was attended by representatives of the DRA, two Town selectmen and the Town’s attorney.

The DRA argued an order for reassessment was appropriate for tax year 2003 due to:

- 1) the time elapsed since the last reassessment in 1994;
- 2) the computed coefficients of dispersion (“CODs”) exceeded 20% for tax years 1997 through 2000;
- 3) the DRA’s stratification of different property types indicating there is disproportionality between property types; and
- 4) the price-related differentials (“PRDs”) for the last three years indicating that low-valued property is being overassessed.

The Town stated that it was in the middle of a multi-year process of updating its tax maps

and installing a computer-assisted mass appraisal (“CAMA”) software program. The Town argued that the physical data of the 1994 assessment had been maintained adequately and, until the tax maps have been updated and the Town’s staff is familiar with the new CAMA program, any reassessment work would be premature. The Town stated that, prompted by a meeting with DRA’s personnel, it was undertaking a 20% reduction in all manufactured home assessments effective for tax year 2001. The Town also argued for delaying a full reassessment because it had not been “flooded” with abatement requests. The Town further stated it preferred to get all the assessment “tools” in place before it proceeded with any reassessment work.

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 supreme court decisions, among others: Sirrell v. State of New Hampshire, 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 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 board orders the Town to conduct a partial reassessment of all manufactured home properties effective for tax year 2002 and a complete reassessment of all properties effective for tax year 2004. While these two reassessment actions are interrelated, the board will detail its findings relative to each reassessment action separately.

2002 Manufactured Home Partial Reassessment

The board's authority to order a partial reassessment is contained in RSA 71-B:16, III, which provides for the board to order a reassessment "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." (Emphasis added.) Further, as the court noted in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986) "we are convinced that the ideal of fair and proportionate taxation can be approached only through a constant process of correction and adjustment of assessments. RSA 75:8, indeed, requires selectmen and assessors to engage in just such continual revision by examining appraisals for error each year."

Review of DRA's equalization summaries for 1998 through 2000 (DRA's Exhibits 1 through 3), clearly indicates that the manufactured-housing strata has been significantly overassessed relative to the town-wide level of assessment for each year. No other strata in those three years has so consistently and substantially diverged from the town-wide level of

assessment. Specifically, in 1998 the town-wide ratio was 1.09, while manufactured housing was at 1.46; in 1999, the town-wide ratio was .96 and manufactured housing was at 1.29; and in 2000, the town-wide ratio was .80 and manufactured housing was at 1.27.

The Town stated it recognized this disproportionality and is currently instituting a 20% reduction of all manufactured home assessments for tax year 2001. The board finds the Town should proceed with such an adjustment because it is better than no adjustment at all and will reduce, to some degree, the inequity in this strata of property, and also because, at this point in the tax year, there is not enough time to perform the comprehensive partial reassessment for 2001 the board is ordering for tax year 2002.

In this context, the board concludes that another factoring adjustment for 2002 is not appropriate in this case to eliminate completely the inequity that exists in the manufactured home strata before a town-wide reassessment is completed in 2004. To understand this conclusion, a detailed discussion of the DRA's equalization survey process is necessary. The board's discussion of the DRA's process will focus on the year 2000 inasmuch as the detailed information, contained in the sales ratio survey supplied by the Town, was submitted only for that year and not for 1998 or 1999.

At the hearing, the DRA placed great reliance on the "sales-assessment ratio study" it completed for the Town, both for equalization and assessment purposes. The DRA is authorized to complete this study for each municipality under RSA 21-J:9-a, as part of its overall equalization responsibilities. The board finds the DRA's exclusion of certain sales from its 2000 equalization survey resulted in the analysis not being truly representative of the properties in

Town and, thus, its conclusions being imprecise. The DRA excluded 17 sales because they involved current-use assessments and 10 sales for “unclassified” reasons. Together these comprised over 55% of all sales excluded by the DRA in the ratio study. The DRA’s representatives, the director and the deputy director of the property appraisal division, testified the primary purpose of its equalization survey is for indirect equalization purposes, i.e., distribution of regional school district, county and state-wide taxes. However, since receiving its RSA 21-J:3, XXV authority in 1999 to petition the board for reassessment, the DRA acknowledged a secondary purpose of the equalization survey has been to measure a municipality’s assessment equity.

A review of the International Association of Assessing Officers (“IAAO”) standard on ratio studies (approved July, 1999) indicates that ratio studies do indeed have multiple purposes including indirect equalization and measurement of assessment equity. Regardless of the purpose, however, the most important design consideration of such studies is that the sample being studied be representative of the population it is intended to measure or provide insight into. “The most important consideration is that the study sample be representative of the population of properties (direct equalization) or the population in dollars of property value (indirect equalization) in terms of the level and uniformity of appraisal.” IAAO, “Standard on Ratio Studies,” Assessment Journal, Sept. - Oct. 1999, §3 at 26. Also, the New Hampshire Supreme Court has indicated that a sample of sales for calculating a taxing district’s level of assessment must be based on a “fair cross section” of properties in that district. Snow v. City of Rochester, 119 N.H. 181, 183 (1979); Freedman v. Exeter, 107 N.H. 163 (1960).

The DRA's exclusion of the current-use sales reduced the representativeness of the sample by essentially eliminating improved and unimproved sales involving large acreage. The board is mindful of the DRA's argument that a municipality may not always submit the ad valorem value of property in current use and, thus, is unable to calculate a meaningful ratio for such a sale. However, the DRA, with its RSA 21-J:9-a, III authority to identify representative market data with which to perform its equalization responsibilities, should attempt to obtain such ad valorem information from towns so that sales of properties that are partially or fully assessed in current use are represented in the equalization survey. The board does not agree with the DRA's assertion that the towns necessarily do a less thorough job of assessing the ad valorem values of properties in current use than they do for the ad valorem land assessments of non-current-use properties. If a reassessment firm is contracted by a town to assess the ad valorem values of all properties (see generally, DRA's REV 600 rules) and if no changes occur (e.g., subdivision) to the property, those original ad valorem values on current-use properties should be just as meaningful as the original ad valorem values on non-current-use properties.

In addition, the board finds no statutory support for excluding current-use properties from the sales assessment ratio study. RSA 21-J:9-a, I is a mandatory provision and states the DRA "shall include arm's length sales or transfers of property." (Emphasis added) While current-use properties are subject to certain limitations, see RSA ch. 79-A, nothing suggests a sale of such property is likely to be any less "arm's length" than a sale of non-current-use property.

Consequently, the board has reviewed the sales ratio survey sheets submitted by the Town and performed a stratified ratio study of current-use properties excluded by the DRA but

which appear to be arm's-length sales, based on the information provided by the Town. This analysis is included in Appendix A. The results of that stratified ratio are generally supportive of the Town's overall ratio and indicate a COD reasonable for the rural land that comprises it.

The board also reviewed the "unclassified exclusions" the DRA's deputy director testified were applied because of their abnormally high ratios (outliers). The board finds nearly all of these excluded sales are manufactured homes that sold for significantly less than their assessments. The mere fact that these sales have significantly high ratios should not be a basis for their exclusion from a statistical analysis for either indirect equalization or assessment equity purposes. The wholesale exclusion of such "outliers" is a practice not in keeping with the applicable IAAO standards:

Outlier ratios are very low or high ratios as compared with other ratios in the sample. When the sample is small, outlier ratios may distort calculated ratio study statistics. . . The preferred method of handling an outlier ratio is to subject it to additional scrutiny to determine whether the sale is a nonmarket transaction, a correctable error exists, or the property reduces the representativeness of the sample. . . Outlier ratios can seriously distort a statistical analysis. However, if outlier ratios tend to be concentrated in certain areas or other subsets of the sample, they may point directly to systematic errors in the appraisal process and should be retained if they are truly representative. In appraisal ratio studies, a property should be excluded only if it no longer exists, has been significantly changed, or can no longer be reliably appraised for equalization purposes.

IAAO, supra, "Standard on Ratio Studies", §6.6 at 39.

The board has performed an analysis of all manufactured homes that sold during the time period of the 2000 equalization survey (Appendix B). The board reviewed the sales ratio survey sheets and excluded only those sales that clearly have a specific reason indicated for not being "arm's-length" sales. The stratified ratio of manufactured homes (which includes the five sales

utilized by the DRA) and eight additional sales (8 of the 10 sales the DRA excluded as outliers) provide a clearer picture of how manufactured homes are significantly overassessed in the Town. A comparison of the indicated median ratio of 2.33 of this strata versus the town-wide median ratio of .80 (as determined by the DRA) highlights gross disproportionality. Further, the second array of sales in Appendix B (sales arranged from lowest to highest selling price) indicates the highest ratios are in the manufactured homes that sold for the least amount. Conversely, manufactured homes that sold at \$14,000 and above (the last five sales) indicate ratios that, while significantly higher than the town-wide ratio, are significantly lower than the ratios of the lower-valued mobile homes. This bimodal distribution of the manufactured home ratios indicates that a further factoring of assessments, as proposed by the Town, is not a realistic solution to improve equity.¹

Excluding these outliers from the DRA's ratio study, without any investigation of whether they are representative of the unsold population, results in two errors. First, the scope of the disproportionality of manufactured homes relative to the rest of the properties is inaccurately shown (cf. COD of manufactured homes in Appendix B of 44.37 to the COD of manufactured home strata in the DRA's 2000 equalization summary of 6.92). This exclusion provides a false

¹ It appears that smaller or older manufactured homes are selling for significantly less than their assessed value, while wider or newer manufactured homes are selling at a level much closer to their assessed value.

indication of both the magnitude of the problem and the nature of the remedy necessary to bring manufactured homes back in line with the town-wide level of assessment. Second, the exclusion results in an inaccurate indication of the town-wide level of assessment.

The board has recalculated a new overall sales analysis (Appendix C) by including the current-use sales of Appendix A and the eight excluded manufactured home sales. The median ratio of this revised overall ratio of .84 is higher than the median ratio of the DRA's equalization survey of .80 used for equalization purposes. However, the board recognizes the inclusion of the high ratio but low-valued manufactured home sales does distort the median ratio conclusion for indirect equalization purposes. A further ratio study of all sales except manufactured homes sales (Appendix D) highlights how both the median ratio and COD are impacted by these sales. (Cf. the median ratio and COD of Appendix C of .84 and 68.63, respectively, with the median ratio and COD of Appendix D of .80 and 14.40, respectively). Consequently, the DRA should not necessarily conclude the board is advocating the ratio for indirect equalization purposes should have been .84. Where the median ratio is impacted inordinately by the number of high ratio sales, a weighted average by the assessed value of each sale would arrive at a more meaningful ratio to be utilized for indirect equalization purposes. IAAO standard 7.3.5 provides:

For indirect equalization or for the evaluation of a discrimination claim, the weight assigned a measure of central tendency of a stratum should be proportional to the share of that stratum's total estimated market value. Because number of parcels bear only a loose relationship to dollar value, weighting by number of parcels is not appropriate for indirect equalization.

IAAO, supra, "Standard on Ratio Studies" at 43.

In conclusion of this section, the board finds a proper ratio study for assessment equity purposes should include the current-use sales and the manufactured-home sales excluded in the DRA's 2000 equalization survey. The inclusion of those sales clearly indicates the remedial action for manufactured homes must entail a complete measure and list of all manufactured homes in Town and a market analysis of manufactured homes sales subsequent to, but not necessarily exclusive of, the sales utilized in the DRA's 2000 equalization survey. This analysis is necessary to properly determine the appropriate appraisal models and depreciation for different types of manufactured homes. In addition to analyzing recent manufactured home sales, the Town needs to perform a ratio study of all sales in Town for the same time period utilized in its manufactured home study in order to estimate a target level of assessment for all properties throughout the Town. This will allow the Town to relate the new manufactured home values to the proper level of assessment. The Town shall implement the new manufactured home assessments for the 2002 tax year in its final tax bill for that year.

2004 Complete Reassessment

The board orders the Town to conduct a complete town-wide reassessment for tax year 2004. This shall include a full measuring and listing of all properties including the manufactured homes that were revalued in 2002. The board believes an overall Town-wide reassessment is necessary due to the time elapsed since the last reassessment² and the need for reinspecting

² "Part II, article 6 [of the New Hampshire Constitution] . . . require[s] that property be assessed at market value at least every five years." Sirrell v. State of New Hampshire, No. 2001-003, __N.H.__, <http://www.state.nh.us/courts/supreme/opinions/0105/sirre087.htm> (May 3, 2001).

properties that, despite the Town's good efforts, may have had additional improvements not picked up in the interim. Also, because manufactured homes generally tend to depreciate at a faster rate than non-manufactured homes, the board believes it is necessary to reinspect and revalue all manufactured homes as part of the 2004 reassessment.

If the board was not ordering a partial reassessment for manufactured homes for 2002, a complete reassessment for 2003, as requested by the DRA, would be appropriate. However, the board believes an additional year for the Town to conduct a complete reassessment will allow it to complete the tax map updating, the CAMA software conversion process and permit the Town's staff to become knowledgeable and effective. Also, conducting a reassessment in 2004 with the assistance of a CAMA program will allow the Town to be in a good position to meet the standards of the DRA's certification of assessments (2001 session, Ch. 158, § 56 adding RSA 21-J:11-a). With such software in place and with the DRA's schedule for the Town to be reviewed in 2005, the Town will have the ability to review market data that occurred subsequent to the 2004 reassessment and make any adjustments necessary to comply with the standards to be enacted by the DRA and/or the assessing standards board (2001 session, Ch. 297, § 2, RSA 21-J:14-a and b).

Further Proceedings

Both the 2002 partial reassessment and the 2004 complete reassessment must comply with the applicable statutes and regulations, including PART 600 of the DRA's rules on reassessment. Further, the board is requesting its tax review appraiser, Mr. Stephan Hamilton, to review, on an ongoing basis, the procedures and analysis employed during both the 2002 partial

reassessment and the 2004 complete reassessment. The involvement of the board's review appraiser is not intended to supplant the selectmen's assessment responsibilities or to be duplicative of the DRA's responsibility to monitor appraisals pursuant to RSA 21-J:11, II. Rather, based on its experience with other ordered reassessments, the board believes an active participation by its tax review appraiser during the process will be beneficial to the Town and is preferable to waiting until the reassessment is complete.

The Town shall notify the board, in writing, starting January 1, 2002, and every three months thereafter, as to its progress in carrying out the 2002 partial reassessment and the 2004 complete reassessment. Upon receipt of this order the selectmen shall post copies of this order in two public places within the Town.

Findings of Fact and Rulings of Law

In these responses, "neither granted nor denied" generally means one of the following:

- a. The request contained multiple requests for which a consistent response could not be given;
- b. The request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. The request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. The request was irrelevant; or
- e. The request is specifically addressed in the decision.

Town

Findings of Fact

1. Granted, with a change to the verbiage amending “study of the assessment equity” to an equalization study.
2. Denied.
3. Granted.
4. Granted.
5. Neither granted nor denied.
6. Neither granted nor denied.
7. Neither granted nor denied.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Granted.
15. Denied.
16. Denied.
17. Neither granted nor denied.
18. Granted.
19. Granted.
20. Granted.

21. Neither granted nor denied.
22. Granted.
23. Granted.
24. Neither granted nor denied.

Rulings of Law

25. Denied.
26. Granted.
27. Granted.
28. Denied.
29. Denied
30. Denied.
31. Denied.
32. Neither granted nor denied.

DRA

Findings of Fact

1. Granted, with a change to the verbiage amending “study of the assessment equity” to an equalization study.
2. Granted.
3. Granted.
4. Denied.
5. Granted, with “Officials” corrected to Officers.

6. Neither granted nor denied.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Granted.
14. Neither granted nor denied.
15. Denied.
16. Denied.
17. Granted.

Rulings of Law

1. Neither granted nor denied.
2. Neither granted nor denied.
3. Neither granted nor denied.
4. Granted.
5. Neither granted nor denied.
6. Granted.
7. Granted.
8. Denied.

- 9. Granted.
- 10. Granted.
- 11. Granted.
- 12. Granted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to: Jay L. Hodes, Esq., Counsel for Town of Deering; Chairman, Board of Selectmen, Town of Deering; Mark Bennett, Esq., Counsel for the DRA; and Guy Petell, Director of Property Appraisal, DRA.

Date: October 5, 2001

Lisa M. Moquin, Clerk

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D