

**Town of Stark**

**Docket No.: 18410-00RA**

**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 Stark (“Town”). On August 6, 2001, a public hearing was held, in accordance with the board’s July 2, 2001 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 a representative of Avitar, the Town’s assessing contractor.

The DRA argued an order for reassessment was appropriate for tax year 2003 due to: 1) the time elapsed since the last reassessment in 1992; and 2) the computed coefficients of dispersion (“CODs”) exceeded 20% for tax years 1997 through 2000.

The Town stated that it was not contesting the need for a reassessment and, in fact, was entering into a contract with Avitar for a partial reassessment for 2001. This partial reassessment would consist of the same processes as a full reassessment with the exception that it would rely upon existing physical descriptions. The Town believes the current physical data on the assessment-record cards is still very accurate but has agreed that, if during the reassessment sales

review process, significant errors are found in the physical description of properties, a complete measure-and-list reassessment would be done effective for tax year 2002.

At the conclusion of the hearing, the board kept the record open to receive a signed contract for a partial reassessment, which was submitted in a timely fashion. Although the DRA approved the contract "because it complies with Rev 600 as a partial reassessment," the DRA still takes the position the contract is insufficient and the board should order a full reassessment.

### **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.

Based on the evidence received at the hearing and the contract submitted relative to performing a partial reassessment for 2001, the board dismisses the DRA's petition. The board finds the Town's plans to perform a partial reassessment in 2001, with the back up plan to perform a full reassessment for 2002 if the physical descriptions are not accurate, is a reasonable approach to fulfill the Town's constitutional requirement of ensuring proportionality and assessing property at market value at least every five years. While certainly several of the RSA 71-B:16-a criteria for ordering a reassessment are a concern (e.g., the time elapsed since the last reassessment and the recent CODs), the board finds the Town's plans for a reassessment are well thought out, address those criteria and are proceeding with enough certainty so no reassessment order by the board is necessary. The Town has shown commitment to those plans by raising adequate funds for the partial reassessment in 2001, signing a contract to perform the partial reassessment and inserting a provision in the contract for a full reassessment if the physical data is found to be inaccurate. In fact, the Town's time frame in which to perform a reassessment is earlier than that recommended by the DRA.

The board finds there is adequate evidence that the Town's original data collection was well done and has been maintained well through the "pick-up" process since the last reassessment. During the hearing, the Town testified no serious data problems have shown up during the annual pick-up process to necessitate a full measure-and-list reassessment.

As recently held in Sirrell, supra,

Part II, Article 6 governs the valuation of property for taxation purposes. While it does not require physical inspections, it does require that property be assessed at market value at least every five years. See Opinion of the Justices, 76 N.H. at 596. Property assessment entails both a physical description of the property's features and size and a determination of the unit values for different classes of property.

\_\_ N.H. at \_\_.

The Town has, in the addendum to the contract, provided for a full reassessment for tax year 2002 if it finds during verification of the sales data that the physical descriptions are not as accurate as is believed.

The board does not agree with the supposition that the Town's history of high CODs is evidence of the need to measure and list property anew. Rather, the small sample size of the DRA's ratio studies and the varied motivations and knowledge of the purchasers of recreational property are likely to affect the CODs more than any physical description deficiencies. In addition, the DRA stated it had not checked the accuracy of the Town's assessment records. Consequently, the board finds it need not assert its RSA 71-B:16, III, authority to order a reassessment as the Town is acting in good faith to have one carried out and, indeed, at an earlier date than that recommended by the DRA.

Since September, 2000, the DRA has filed 12 petitions for reassessment with the board, all involving relatively small and rural municipalities like the Town. The Town, for example, has only 691 parcels and had an equalized valuation of only about \$24.1 million according to the DRA's "2000 Equalization Survey Summary Not Including Utility and Railroad."

In this case, the board must question the DRA's decision to proceed with its reassessment

petition in light of the information gained from its ongoing communications and monitoring of the Town, reflected in the testimony and other evidence received at the hearing, and the contract that was near completion and subsequently submitted and approved by the DRA shortly after the hearing. The selectmen that testified at the hearing clearly enunciated their understanding of their assessing responsibilities, both to the citizens of Stark and to the State of New Hampshire, to maintain assessment equity under the constitutional requirements of Pt. 2, Art. 5<sup>th</sup> and 6<sup>th</sup>. The Town explored reassessment scheduling and procedures with its contract assessor, Avitar. While initially considering a multiple-year process, upon advice from Avitar, the Town decided to perform a partial reassessment within one year. The Town appropriated the funds at the 2001 town meeting to carry out the partial reassessment with the understanding that if a full reassessment was necessary, an additional appropriation would be addressed at the 2002 town meeting. The Town stated it communicated these plans in meetings with the DRA's field monitors and in two letters to the DRA.

While the board understands the DRA is under some pressure to ensure assessment equity is improved throughout the state, the board must question whether proceeding with the petition of Stark materially forwards that objective. Given the Town's demonstrated diligence and progress towards performing a reassessment, the board must conclude the DRA's resources could be better spent in investigating other towns that have been less responsive in addressing their assessing responsibilities and petitioning the board only when compliance is lacking. While cognizant of the DRA's relatively new role in monitoring towns and petitioning for reassessments, the board hopes the DRA will improve its communications and responsiveness

with towns that are proceeding in good faith and refrain from filing or pursuing unnecessary petitions.

The board has not responded to the DRA's requests for findings of fact and rulings of law as they are moot in light of the board's decision that a dismissal of the petition is warranted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

---

Paul B. Franklin, Chairman

---

Michele E. LeBrun, 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: Chairman, Board of Selectmen, Town of Stark; Mark Bennett, Esq., counsel for the DRA; and Guy Petell, Director of Property Appraisal, DRA.

Date: September 13, 2001

---

Lisa M. Moquin, Clerk