

Department of Revenue Administration

v.

Town of Winchester

Docket No.: 18412-00RA

ORDER

After a finding in its January 7, 2005 order (“Order”) that the ordered 2003 reassessment performed by Nyberg Purvis & Associates, Inc. (“Nyberg”) was not performed satisfactorily, the board held a hearing on February 7, 2005 in accordance with TAX 208.06(a)(4) to “receive testimony from the town’s assessing officials/selectmen and representatives of the DRA as to what appropriate prospective remedies might result in improved and acceptable assessment equity within the Town.” At the hearing, the “Town” was represented by Attorney Barton L. Mayer, with several selectmen and the town manager also present. Also attending was Robert F. Bertrand of Nyberg, Robert M. Boley of the department of revenue administration (“DRA”), other DRA officials, a number of Winchester taxpayers and the general public.

Attorney Mayer filed a request (Municipality Exhibit A) on behalf of the Town that the board require Nyberg to “correct identified deficiencies” at no cost to the Town and that such work be monitored and reviewed by both the DRA and the board’s review appraisers and be completed by April 1, 2005. The request also stated the board should require Nyberg to post a

performance bond with the Town in the amount of \$75,000 to be released only after Nyberg's work has been reviewed and accepted by the board as satisfactory.

Mr. Bertrand testified he was attending the hearing as a representative of Nyberg and stated that, as the January 30, 2005 letter from Nyberg to the board stated, Nyberg was "fully committed to comply with the board's wishes" but that he had no authority to commit Nyberg to any of the financial commitments proposed by the Town.

Mr. Boley testified that the DRA agrees with the Town's proposal except that the deadline for completion of April 1, 2005 was likely not achievable. Mr. Boley also stated that the DRA wanted to be involved in the review of any corrective update and specifically be involved in the final field review to check adjustments made to properties.

Several taxpayers testified with the common thread of expressing concern of Nyberg continuing to provide assessing services within the Town and several recommended using a different assessing firm to restore confidence in the process.

Board's Ruling

General Comments and Findings

Before making specific findings, the following are some general findings and observations relative to the principles and factors that guided the board's deliberations and influenced its specific remedy detailed later in this order.

1. Part 2, Article 5 of the New Hampshire Constitution requires that assessments be "proportional and reasonable." As discussed in the Order, the coefficients of dispersion ("CODs") contained in the board review appraiser's subsequent ratio studies indicate the assessment equity shortly after the reassessment was as unacceptable as it was prior to the board ordering the reassessment.

2. The board's authority to order reassessments, to review their adequacy and to certify reassessments to DRA if not done satisfactorily is contained in RSA 71-B:16–22.
3. As letters from Nyberg to the board dated December 9, 2004 and January 30, 2005 state, in addition to testimony by Nyberg's representative at the February 7, 2005 hearing, Nyberg has committed to correct errors and perform a statistical update to "comply with the board's wishes . . . [keeping] the best interests of our client and its taxpayers as our priority."
4. The Town spent substantial sums of money to have Nyberg perform the 2003 reassessment and the performance bond contained in that prior contract expired and was released when the final values were accepted by the Town.
5. Despite the requirement in the contract between Nyberg and the Town that the reassessment be done "in a good and workmanlike manner," the board, in its Order, has found Nyberg's work resulted in selective reappraisal and did not result in improved assessment equity.
6. The Town's proposal provides an opportunity for Nyberg to correct the problems with the 2003 reassessment.
7. The DRA has offered to be more involved in monitoring and reviewing the analysis and final values of an assessment update for 2005.
8. Many taxpayers, who attended the two board hearings subsequent to the 2003 reassessment, have expressed a lack of confidence in Nyberg continuing to provide assessing services for the Town.

Specific Findings

As stated at the February 7, 2005 hearing, there is no magic or perfect remedy, but the following course of action is arrived at by considering and weighing the factors listed in the prior section. The board finds the best, most practical and, hopefully, most cost efficient remedy is that proposed by the Town, with some scheduling modifications.

Specifically, the board finds the Town should undertake an assessment update effective for tax year 2005, that it be performed by Nyberg at no additional cost to the Town and entail greater monitoring oversight by the DRA to improve the probability of its success and acceptability by the Town and its taxpayers. As proposed by the Town, reasonable assurance of a satisfactory outcome by Nyberg or, if necessary, some other entity is the requirement that Nyberg provide a performance bond in the amount of \$75,000 to the Town to be released only upon board review and determination that the assessment update was performed satisfactorily.

During the hearing, Attorney Mayer requested the board provide specific guidance as to what the remedy should entail. Consequently, the following paragraphs outline the timeframe and the manner by which the update shall be performed.

1. The property physical data gathered during the 2003 reassessment (and maintained by annual “pickup” changes) can be utilized in the assessment update. Nothing during the board’s subsequent review process indicates any systemic measuring or listing problems with the 2003 reassessment. At the February 7, 2005 hearing the board was made aware of an ongoing annual contract the Town has with Nyberg to perform “assessing services” such as the annual “pick-ups” and other ongoing assessment maintenance functions. Those pick-ups and land splits, etc. should be done by Nyberg under the provisions of that separate contract, but integrated with the 2005 assessment update so that it is based on the most recent and accurate property transfer and physical data information. The Town and Nyberg should ensure that all current use revisions

and the assessment of areas reserved from current use are properly integrated with the revised assessed values of the 2005 assessment update.

2. The assessment update shall review and analyze sales that occurred between July 1, 2003 and December 31, 2004 with appropriate time adjustments to the effective assessment date of April 1, 2005. The analysis shall indicate which and by what process sales are qualified as arm's-length transactions and the reason for any sales that are disqualified. Sales after December 31, 2004 shall not be utilized in the initial sales analysis to establish the updated base rates so that those subsequent sales are available to the DRA and the board's review appraisers to test the efficacy of the update.

3. In addition to the analysis of land only parcels, the update's sales analysis shall utilize the allocation or extraction procedures with improved property sales to arrive at indicated base rates for residential site values, rear land values, waterfront site values and any major adjustment factors, such as view. The correlation of the indicated base rates and the establishment of neighborhoods with different valuations, rates or adjustments shall involve accepted appraisal practices and correlation considerations (e.g., determining which sales are most indicative of value, generally giving most weight to those sales with the least adjustments or assumptions, etc.) and shall be integrated with a field review considering established historical development patterns and neighborhoods within the Town. The analysis shall not only show the calculations but shall also contain a discussion of the factors considered in arriving at the correlated and established land base rates and the major adjustment factors.

4. Building and improvement replacement cost base rates shall be derived as discussed in Rev. 603.14 by localizing national replacement costs schedules with a review or survey of local construction costs. The assessment update shall contain documentation and discussion of how the building unit costs and the depreciation schedules were developed and calibrated.

5. Nyberg may perform sales ratio studies to test the correlation of base rates and neighborhood delineations, but such ratio studies, as noted in the Order, should not be done in lieu of the analysis described above.

6. The assessment-record cards shall contain descriptive notes as to any significant or unusual land or building factors, adjustments or depreciations. As the Order noted, the 2003 assessment-record cards contained no such notes.

The schedule for the update shall be as follows.

1. Nyberg shall commence with the update no later than March 15, 2005.
2. Nyberg shall submit a draft sales analysis, neighborhood delineation and land base rates and building unit cost information to the Town and the DRA by May 16, 2005.
3. No later than June 1, 2005, Nyberg, with oversight of the DRA, shall finalize the sales analysis, finalize the land and building base rates and adjustments and perform a final field review of the new assessments.
4. By June 10, 2005, Nyberg shall arrange for and provide notice to taxpayers of the new values and hold the informal reviews no later than July 29, 2005.
5. Nyberg shall review the assessments of those attending the informal reviews and report their disposition to the taxpayers by August 15, 2005.
6. To ensure the update proceeds as envisioned in this order, the board will have its RSA 71-B:14 review appraisers periodically contact Nyberg, the Town and DRA officials as to the progress of the update and report back to the board as necessary.
7. Further, as indicated earlier, the DRA and the board's review appraisers will review the resulting quality of the assessment equity during the month of August 2005 by performing

appropriate subsequent assessment-to-sale ratio studies based on the available sales subsequent to December 31, 2004.

Execution of This Order

In addition to the parties captioned on this order, a copy is also being sent to Nyberg. Inasmuch as Nyberg has committed to correcting errors resulting from the 2003 reassessment, the board does not anticipate any delay in the initiation of the above outlined assessment update process. However, the Town shall confirm with Nyberg that the assessment update will occur as outlined above and respond to the board within ten (10) days. The principals of Nyberg shall make themselves available for discussions with the Town during this time period.

If Nyberg fails to agree with any of the substantive provisions of the update process outlined above, the board shall, pursuant to RSA 71-B:17, forthwith certify the assessment update to DRA to have it performed. If certification of the assessment update occurs, the cost of having it performed shall be assessed to the Town as provided by RSA 71-B:18 and RSA 21-J:9-c, II. The board does not, however, expect certification to be necessary given the representations by Nyberg of its commitment to correct the unsatisfactory 2003 reassessment. Nonetheless, given the long history of inequitable assessments both prior and subsequent to the 2003 reassessment, the board believes it has no other option as a last resort other than to certify it to the DRA if Nyberg is unwilling to proceed in the manner proposed by the Town and outlined above.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Mark Bennett, Esq., State of New Hampshire, Department of Revenue Administration, 57 Regional Drive, Concord, New Hampshire 03302, counsel for the Petitioner; Chairman, Board of Selectmen, Town of Winchester, 1 Richmond Road, Winchester, New Hampshire 03470; Leonard Nyberg, Jr., Nyberg Purvis & Associates, 125 Savageville Road, Lisbon, New Hampshire 03585, contract assessor for the Town; and the following Interested Parties: Arthur Alexander, 384 Back Ashuelot Road, Winchester, New Hampshire 03470; Marcia Ammann, 32 Michigan Street, Winchester, New Hampshire 03470; Blaise J. Barstow, 100 Elm Street, Winchester, New Hampshire 03470; Broderick Bashaw, 17 Fenton Hill Road, Ashuelot, New Hampshire 03441; Jacqueline L. Beaman, 463 Old Spofford Road, Winchester, New Hampshire 03470; Scott Bradley, #30 Old Rixford Road, Winchester, New Hampshire 03470; Cary Broadbit, 34 Very Brook, Winchester, New Hampshire 03470; Bruce Caron, 126 South Parrish Road, Winchester, New Hampshire 03470; Myla Carpenter, 66 Rabbit Hollow Road, Winchester, New Hampshire 03470; Dan Carr, Box 111, 25 Main Street, Ashuelot, New Hampshire 03441; George E. Chenier, 507 Forest Lake Road, Winchester, New Hampshire 03470; Erika Cohen, The Keene Sentinel, 60 West Street, Post Office Box 546, Keene, New Hampshire 03431; Margaret Conant, 367 Keene Road, Winchester, New Hampshire 03470; Sandy Cook, 811 Manning Hill Road, Winchester, New Hampshire 03470; Phillip Earley, 4A Chapel, Winchester, New Hampshire 03470; John & Chris Frado, 259 Bolton Road, Winchester, New Hampshire 03470; Christine B. Hadley, 60 Rabbit Hollow Road, Winchester, New Hampshire 03470; Elena Heiden, Post Office Box 93, Winchester, New Hampshire 03470; Vicki Hooper, 15 Smith Court, Winchester, New Hampshire 03470; Billie-Jo Knoll, 248 Back Ashuelot Road, Winchester, New Hampshire 03470; Robert Merchant, 242 Bolton Road, Winchester, New Hampshire 03470; John Miner, 71 Broad Brook Road, Ashuelot, New Hampshire 03441; Edward Naile, 61 Tubbs Hill Road, Deering, New Hampshire 03244; Whip Newell, 3 Old Chesterfield Road, Winchester, New Hampshire 03470; Gary R. O'Neal, 400 Schofield Mountain Road, Ashuelot, New Hampshire 03441; Brian Oates, 24 Avery Circle, Winchester, New Hampshire 03470; Henry Parkhurst, State Representative, District #4, One Parkhurst Place, Winchester, New Hampshire 03470; Guy Petell, State of New Hampshire, Department of Revenue Administration, 57 Regional Drive, Concord, New Hampshire 03301; Rep. Stanely S. Plifka, Jr., Post Office Box 459, Scofield Road, Winchester, New Hampshire 03470; Alden Powers, 636 Warwick Road, Winchester, New Hampshire 03470; Irene Pratt, State Representative, District #4, 66 Clark Road, Winchester, New Hampshire 03470; Richard Pratt, 222 Richmond Road, Winchester, New Hampshire 03470; Richard and Rebecca Pratt, 89 Old Mountain Turnpike Road, Winchester, New Hampshire 03470; Jill Rokes, 70 Acorn Drive, Winchester, New Hampshire 03470; Paul Sepe, PMB 242, 75 Main Street, Suite 4, Plymouth, New Hampshire 03264; Jane Severance, 84 Warwick Road, Winchester, New Hampshire 03470; Anthony F. Simon, 700 Hall Street, Manchester, New Hampshire 03104; William Struthers, 63 Ashuelot Street, Winchester, New Hampshire 03470; Brian Thompson, 13 North Winchester Street, Winchester, New Hampshire 03470; and Alan Willard, 35 Woodward Avenue, Winchester, New Hampshire 03470.

Date: February 16, 2005

Anne M. Stelmach, Deputy Clerk