

Department of Revenue Administration

v.

Town of Winchester

Docket No.: 18412-00RA

ORDER FOR REASSESSMENT

On December 19, 2000, the department of revenue administration (“DRA”) filed a petition pursuant to RSA 21-J:3, XXV, (Supp. 2000) requesting the board order a reassessment of all property within the Town of Winchester (“Town”). On July 23, 2001, a public hearing was held in accordance with the board’s June 22, 2001 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, selectmen, the Town’s administrative assistant and representatives of Avitar, the Town’s assessing contractor.

The DRA argued an order for reassessment was appropriate for either 2003 or 2004 due to: 1) the time elapsed since the last reassessment in 1994; 2) the coefficients of dispersion exceeded 20% for tax years 1997 through 1999; and 3) a review of several strata of property within the Town, such as waterfront and manufactured homes, indicates they are assessed at significantly different levels than the general level of assessment. The DRA argued that a full revaluation is needed and if done in 2003, no interim update reassessment is necessary.

However, if the full revaluation is put off until 2004, the Town should perform an update assessment work on property types such as manufactured homes to improve the assessment equity in the interim.

The Town stated that it had appropriated \$40,000 at the 2001 town meeting and had plans to raise the balance of the funds for a complete revaluation in the next two years. The Town requested the board not order a reassessment inasmuch as the Town is proceeding on its own to fund a full revaluation. The Town also described efforts it had taken with its contractor, Avitar, to convert physical data from their existing manual property-card system to Avitar's software, update tax maps, review current-use assessments and properly assess the gravel activity tax.

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 decisions of the supreme court, among others: Sirrell v. State of New Hampshire & a., 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

Page 3

DRA v. Town of Winchester

Docket No.: 18412-00RA

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, III 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 last complete reassessment was performed in 1994 using a manual property-record card system. Since that time the assessments for new construction have been done but no updates or revisions to the overall assessment base have been performed. Clearly, under the provisions of Pt. 2, Art. 6 and the recent ruling in Sirrell, the Town needs to perform a full reassessment as soon as possible. Both the DRA and the Town stated that an appropriate time frame to perform a reassessment was, at the earliest 2003, and at the latest 2004. Consequently, the only questions are whether the board should order the reassessment and for which year if it does order a reassessment. The board is sensitive to Selectman Kennedy's argument that voters at town meeting might be more responsive to carry forth plans on the Town's own recommendations as opposed to being ordered by the board to do the reassessment. While the board recognizes that may be a factor in discussions at the Winchester town meeting, the board is, however, bound by its statutory responsibility contained in RSA 76:16 and 16-a and the constitutional provisions to ensure that if a reassessment is needed, it occur as quickly as

possible. Consequently, the board orders the Town to perform a full reassessment effective for tax year 2003. As presented at the hearing, the Town's plans to convert its manual system to a computerized one makes sense, and the Town should be commended on having initiated those steps. The board's reassessment order is not in conflict with any of the Town's plans but simply ensures it is carried out in the fashion the Town outlined during the hearing.

The Town, starting March 1, 2002, and every three months thereafter, shall notify the board in writing as to its progress in carrying out this reassessment order. The reassessment must comply with the applicable statutes and regulations including PART 600 of the DRA's rules on reassessment. Further, when the Town enters into an approved contract to complete the full reassessment, it shall forward a copy of that contract to the board as part of the update process. Mr. Stephan Hamilton, the board's review appraiser, will be involved in reviewing these updates and, to the extent necessary, involved in monitoring the Town's progress in carrying out the ordered reassessment for tax year 2003. The involvement of Mr. Hamilton is not intended to supplant the selectmen's assessing responsibility or 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 a more active participation by its review appraiser during the reassessment process will be beneficial to the Town instead of waiting until the reassessment process is complete. In short, the board wants to ensure, as much as possible, the Town receives the highest quality reassessment for the funds expended.

Findings of Fact and Rulings of Law

The board responds to the DRA's requests as follows.

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.

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, with 1997 ratio corrected to .98.
4. Granted, with 1997 COD corrected to 22.20.
5. Granted, with "Officials" corrected to officers.
6. Neither granted nor denied.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Neither granted nor denied.

12. Granted.

13. Granted.

14. Denied.

15. Denied.

16. Denied.

Rulings of Law

1. Neither granted nor denied.

2. Neither granted nor denied.

3. Denied.

4. Neither granted nor denied.

5. Neither granted nor denied.

6. Granted.

7. Neither granted nor denied.

8. Denied.

9. Granted.

10. Granted.

11. Granted.

12. Neither granted nor denied.

Upon receipt of this order, the selectmen shall post the order in two public places within the Town.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, 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 Winchester; Mark Bennett, Esq., counsel for the DRA; and Guy Petell, Director of Property Appraisal, DRA.

Date: August 6, 2001

Lisa M. Moquin, Clerk