

In Re: Gilford Petition for Reassessment

Docket No.: 18423-01RA

ORDER

This order relates to the January 29, 2001 petition for reassessment submitted to the board by 50 or more property taxpayers in the Town of Gilford (“Town”) pursuant to RSA 71-B:16, IV. The petition and the accompanying complaints for reassessment (collectively “the Petition”), requested a “reassessment of all properties in the community” and presented several arguments as to why the tax year 2000 update performed by the Town was flawed.

In accordance with TAX 208.05(a)(3) the board directed its RSA 71-B:14 tax review appraisers to perform a comparative study of recent sales and assessments (“Study”). The Study was filed with the board on January 24, 2002, with copies provided to the lead petitioner and the Town. While the Study found the Town has developed “an equitable process for maintaining proportionality,” the Study did raise four concerns summarized on page 23 and detailed in the body of the Study.

As provided by TAX 208.05(a)(5), a hearing was held on March 25, 2002 to receive testimony and evidence as to the petitioners’ (“Petitioners”) allegations and the concerns raised in the Study. Testimony and evidence was received from the Petitioners, the Town and any Gilford taxpayer as to whether the board should order a general or partial reassessment of

property pursuant to RSA 71-B:16, III.

At the hearing, an issue was raised by a Gilford taxpayer as to whether the notice of the hearing contained in the board's February 20, 2002 order ("Order") was properly posted. The board finds the Town complied with the Order to post it "in two public places in the Town and in a newspaper of general circulation . . ." by actually posting it in three public places and having it printed in the Laconia Citizen newspaper.

Board's Rulings

Based on a review of all the evidence and testimony submitted, and considering the five criteria of RSA 71-B:16-a, the board concludes an order for reassessment is not necessary at this time. The board details its rulings as follows.

The following constitutional, statutory and case law references establish the parameters for equitable assessments and the board's authority to review a municipality's compliance with those precepts.

The right to equitable assessment and taxation is guaranteed by the New Hampshire Constitution. N.H. Const. pt. I, art. 12 and pt. II, art. 5 and 6. "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, 146 N.H. 364 (2001); Opinion of the Justices, 145 N.H. 474 (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).

In 2001, RSA 75:8 was amended and RSA 75:8-a was enacted to address consistent assessment methodology concerns raised in Sirrell, supra, and to comply with the equitable and periodic assessment requirements of pt. II, art. 5 and 6 of the New Hampshire Constitution.

75:8 Revised Inventory.

I. Annually, and in accordance with state assessing standards, the assessors and selectmen shall adjust assessments to reflect changes so that all assessments are reasonably proportional within that municipality. All adjusted assessments shall be included in the inventory of that municipality and shall be sworn to in accordance with RSA 75:7.

II. Assessors and selectmen shall consider adjusting assessments for any properties that:

- (a) They know or believe have had a material physical change;
- (b) Changed in ownership;
- (c) Have undergone zoning changes;
- (d) Have undergone changes to exemptions, credits or abatements;
- (e) Have undergone subdivision, boundary line adjustments, or mergers;
- or
- (f) Have undergone other changes affecting value.

75:8-a Five-Year Valuation. At least as often as every fifth year, beginning with the first year the commissioner of the department of revenue administration

certifies a municipality's assessments pursuant to RSA 21-J:3, XXVI, the assessors and/or selectmen shall value all real estate within the municipality so that the assessments are valued in accordance with RSA 75:1.

The board's authority to order a reassessment of ". . . any or all the property in a taxing district . . ." is contained in RSA 71-B:16, III and the criteria for such determination in RSA 71-B:16-a.

71-B:16 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.

71-B:16-a. 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.

Petitioners' Arguments

The board now turns its attention to the Petition and the Town's defense of its assessment practices.

In addition to holding a hearing, the Petition requested the board:

". . . B. Declare that the statistical update is not valid;

C. Find that just cause exists to order a general revaluation of all properties in the community;

D. Order the Town of Gilford to undertake general revaluation for tax year 2000 that includes physical inspections and appraisals of all properties in the community;

E. Order that the Town of Gilford pay the taxpayers' legal fees in connection with preparation and prosecution of this action; and

F. Order such other and further relief as is just and equitable."

At the hearing, several of the Petitioners presented testimony and evidence about their own and other properties to support their argument that properties in general had not been properly assessed by the Town and, thus, a reassessment should be ordered. Further, the Petitioners, largely through cross examination of Mr. Wil Corcoran, the Town's appraiser, and Mr. Stephan Hamilton, the board's senior tax review appraiser, questioned whether the assessment-to-sales ratio studies performed by both were not representative of the Gilford tax base.

Town's Arguments

The Town's defense, primarily contained in the Town's report (Municipality Exhibit A) ("Report"), contains lengthy analyses of many of the issues raised in the Study and by the Petitioners. It can best be summarized by the first two paragraphs of the Report.

Revaluation should not be ordered by the Board because the Town has been, and remains committed to a program of assessment uniformity each year, and, as a result, the Town meets and exceeds all the criteria defined in RSA 71-B:16 every year.

. . . The Town of Gilford has an aggressive policy of perpetual analyses and ongoing re-assessments. These policies and procedures meet and exceed IAAO technical and ethical standards, and serve to allow the Selectmen to adhere strictly

to RSA 75:8, Revised Inventory, every year.

Board's Detailed Findings

First, the board denies the Petitioners' request for a reassessment for tax year 2000. At this point in time, a retrospective reassessment order is not warranted and would not be practical.

Therefore, the balance of the board's findings will address why it declines to prospectively order a reassessment for the Town.

The board finds the Town's ongoing assessment system to be an integrated, two-pronged process. In 1994 the Town started an ongoing cyclical process of annually measuring and inspecting 20% to 25% of all improved properties in the Town. The Town also at that time initiated an annual review of the market and adjusted properties by neighborhood or class where market data indicated assessments were no longer proportional.

The board rules the Town's two-pronged assessment process complies with the constitutional, statutory and case law provisions outlined earlier in this decision. In fact, the Town should be commended for implementing its progressive process for maintaining assessment equity. The board will review the Town's process in detail with regard to issues raised by the Petitioners and those identified in the Study.

The board finds the Town's process of cyclical inspections of property on a four-to-five year cycle is a realistic way to maintain and, in fact, improve the physical data descriptions of properties. As the Town explained, the mere remeasuring and listing of the properties, in and of itself, does not necessarily generate a value change. Capturing improvements not previously assessed or making corrections to the prior descriptions and measurements is simply part of an ongoing process of improving the physical database on which the annual valuation updates are

calculated.

While the board acknowledges the Town's arguments as to why condominiums have not been included in the cyclical inspection process, the board strongly suggests they should be in the future. The Town should attempt to inspect those properties when absentee owners are more likely to be present and, if unable to obtain access, send a questionnaire requesting interior descriptive information. Even though the Town's presumption that the likelihood of unreported change to condominiums is less frequent than that of other properties may be true, it is important for the Town to cyclically review and inspect all properties to ensure that its database is as accurate as possible.

The regressivity of property assessments identified in the Study and the Petitioners' mention of several underassessed water and view-influenced properties both relate to the same issue of certain high-valued properties being underassessed and, thus, will be collectively reviewed by the board. Based on a review of the stratified statistical analyses contained in both the Study and the Report, the board concludes that, indeed, higher-valued properties in the Town have not been as aggressively reassessed as they should have been. As the Town's Report indicates, the annual appreciation of water and view-related properties has been generally much greater than non-water or non-view-related properties. Yet because of the relatively limited number of sales and sometimes disparate value indications,¹ the Town's assessment adjustments were on the conservative side and did not include all neighborhoods or types of property that had

¹ A number of examples submitted by the Petitioners showed the market appreciation indications for these types of properties were not always consistent or easily analyzed, and therefore, a single market adjustment was difficult to confidently calculate.

increased significantly in value. The Town conceded during the hearing, that, for tax year 2002, it would be looking more closely at those strata of property to see whether a more aggressive market adjustment is warranted to reduce the regressivity of property assessments.

However, the board notes the adjustments the Town utilized did significantly improve the Town's statistical measurements of assessment equity from those that would have occurred if no update had occurred in 2000 or 2001. The Town's ratio studies for 2000 and 2001 indicated price-related differentials ("PRD") after the updates of 1.09 and 1.08, respectively, while, without any updates, the PRDs would have been 1.22 and 1.19 for tax years 2000 and 2001. The Town's updates also kept the coefficients of dispersion ("CODs") within reasonably acceptable standards. The CODs, as analyzed by the Town on page 4 of the Report, indicate ratios in the 12.5% to 14.5% range as a result of the updates, whereas, they would have exceeded 20% if the two-year update had not occurred.²

While the board finds the Town should have been more aggressive in adjusting property strata where market data within that strata or in similar strata indicated significant market increases, the board also finds the Town has the process in place and competent and knowledgeable assessing employees to perform such updates. Also, as noted, the Town's

² While the CODs and PRDs determined by the board's tax review appraiser in the Study are slightly different due to non-concurrent sample periods and exclusion/inclusion of certain sales, the CODs and PRDs in the Study are of similar magnitude as those calculated in the Town's Report and generally support the effectiveness of the Town's updates.

updates have produced significantly better levels of assessment, CODs and PRDs, and thus, under RSA 71-B:16-a, III, the Town has complied with the statutory criteria of assessing to produce reasonable levels of assessment and acceptable CODs. Further, the board finds the Town's ongoing process of cyclical measurements and annual market reviews should maintain equitable assessments into the future without the need for a complete town-wide revaluation. The board finds this satisfies the criteria contained in RSA 71-B:16-a, I, II, IV and V.

The Petitioners, through their cross examination, raised the question of whether the ratio studies utilized in either the Study or the Report were based on a representative sample of the types of property within the Town. Representativeness of the sample being analyzed is an important criteria in determining the validity of the resulting ratios;³ however, the Petitioners did not present evidence as to how the sales samples of the ratio studies were not representative of the properties in the Town. Certainly, the sales the Petitioners submitted were selectively chosen and, by themselves, constitute a far less random sample than all the valid sales utilized in the ratio studies of the Report or the Study. Thus, the board is unable to find the conclusions of the ratio studies in either the Report or the Study do not provide valid indications as to the equity of the Town's assessment updates.

The Study raised additional concerns as to the lack of reliable information presented on

³ Snow v. Rochester, 119 N.H. 181 (1979); Freedman v. Exeter, 107 N.H. 163 (1966) (for a ratio study to be valid, the sample of sales utilized must "represent a fair cross section of the properties in the [municipality]." Snow at 183.

the commercial/industrial property assessment-record cards and that two commercial properties had been calculated by the income approach whereas others had been assessed by the cost/market approach. The Town testified that it was in the process of having its software provider revise the commercial/industrial assessment-record cards so all the physical data was properly listed on the assessment-record card. Also, the Town stated the two income-valued properties had been reassessed in keeping with the methodology used for other similar income-producing properties. Consequently, the board finds the Town is proceeding properly in addressing those concerns to adequately maintain its records and provide understandable and equitable assessments.

In conclusion, the board finds the Town's general assessment process is in keeping with the constitutional and statutory requirements of assessing. Additionally, the Town appears to have the procedures and personnel in place to adequately address those areas that need improvement in 2002 and the future. Consequently, after consideration of the five criteria in RSA 71-B:16-a, the board finds there does not exist a basis for ordering a reassessment. Because of this finding and because the board lacks authority to assess attorney's fees (see Appeal of Land Acquisition, 145 N.H. 492, 497-8 (2000)), the board denies the Petitioners' request for legal fees.

The board would note the Petitioners, or any other 50 or more taxpayers in the Town, have the same remedies in future tax years of filing a petition pursuant to RSA 71-B:16, IV, if the Town is not fulfilling its assessment responsibilities or filing individual appeals, pursuant to RSA 76:16-a or 17.

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 been mailed this date, postage prepaid, to: John G. Cronin, Esq., counsel for the petitioners; Chairman, Selectmen of Gilford; Walter L. Mitchell, Esq., counsel for the Town; Guy Petell, Manager, Bureau of Assessment, Department of Revenue Administration; Mark Smith, Laconia Daily Sun; and Joseph Hoffman, Interested Party.

Date: May 24, 2002

Anne M. Bourque, Deputy Clerk